



Administrative Office of the Courts

Nashville City Center, Suite 600
511 Union Street
Nashville, Tennessee 37219
615 / 741-2687 or 800 / 448-7970
FAX 615 / 741-6285

BILL YOUNG
Director

ANA L. ESCOBAR
Deputy Director

MEMORANDUM **(July 2014)**

This memorandum lists the instructions the Tennessee Pattern Jury Instruction Committee (Criminal) changed or created after the 17th edition of the book was published in 2013. The Administrative Office of the Courts' website includes Word and WordPerfect "without comments and footnotes" versions of the instructions at issue. The "with comments and footnotes" versions of newly created instructions 2.06(b), 10.24, 31.22, 38.01, and 38.22 are attached to this memorandum. If the committee changed a comment and/or footnote but did not change the text of an instruction, the instruction will be listed below but it will not be posted on the AOC's website.

0.00 – Criminal Jury Charge Checklist

- a. In the "Venue" section on p. 3, delete "2.06" and substitute "2.06(a)".
- b. Immediately below that, insert the following:

or

___ 2.06(b) Venue (continuous sexual abuse of a child)

2.05 – Burden of Proof: Venue (General)

- a. Delete the text of Comment One and substitute the following: See T.P.I. – Crim. 2.06(a), Burden of Proof: Venue (computer offenses) and 2.06(b), Burden of Proof: Venue (continuous sexual abuse of a child).

2.06 – Burden of Proof: Venue (Computer Offenses)

- a. Renumber this instruction as 2.06(a).

2.06(b) – Burden of Proof: Venue (Continuous Sexual Abuse of a Child)

- a. New instruction

3.01 – Criminal Responsibility

- a. Insert the following language as a new paragraph in brackets immediately before the last paragraph (that begins with “Before you find the defendant(s) guilty”): [To find a defendant criminally responsible for the acts of another, it is not necessary that you find the defendant was present or that the defendant took a physical part in the crime; encouragement of the principal offender is sufficient. However, mere presence during the commission of the offense is not sufficient to support a conviction.](INSERT FOOTNOTE HERE WITH THE FOLLOWING TEXT: *State v. Little*, 402 S.W.3d 202, 217 (Tenn. 2013).)
- b. Add the following as a new, bracketed paragraph at the end of the instruction on p. 34: [It is not a defense that the person for whose conduct the defendant is criminally responsible *[belonged to a class of persons who by definition of the offense was legally incapable of committing the offense in an individual capacity] [has been acquitted] [has not been [prosecuted] [convicted]] [has been convicted of a [different offense] [different type or class of offense]] [is immune from prosecution]*].(INSERT FOOTNOTE HERE WITH THE FOLLOWING TEXT: T.C.A. § 39-11-407.)
- c. Delete the text of existing footnote 6 on p. 33 and substitute the following: *State v. Howard*, 30 S.W.3d 271 (Tenn. 2000). This is known as the “Natural and Probable Consequences Rule.” See Comment 2.
- d. Add a Comment 2 with the following text:

“The natural and probable consequences rule arose as a common law component of criminal responsibility and extends criminal liability to the crime intended by a defendant, and collateral crimes committed by a co-defendant, that were the natural and probable consequences of the target crime.” *State v. Richmond*, 90 S.W.3d 648, 654 (Tenn. 2002) (citing *State v. Carson*, 950 S.W.2d 951, 954 (Tenn. 1997)). “The rule underlies the doctrine of criminal responsibility and is based on the recognition that aiders and abettors should be responsible for the criminal harms they have naturally, probably and foreseeably put into motion.” *State v. Howard*, 30 S.W.3d 271, 276 (Tenn. 2000) (citing *Carson*, 950 S.W.2d at 954-44). In *Howard*, the Tennessee Supreme Court set out a three prong test that courts are to apply when liability is based upon the natural and probable consequences rule:

the State must prove beyond a reasonable doubt and the jury must find the following: (1) the elements of the crime or crimes that accompanied the target crime; (2) that the defendant was criminally responsible pursuant to Tennessee Code Annotated section 39-11-402; and (3) that the other crimes that were committed were the natural and probable consequences of the target crime.

Howard, 30 S.W.3d at 276. The natural and probable consequences rule is an “essential element that the State must prove beyond a reasonable doubt,” and failure to instruct the jury on this rule is constitutional error. *Richmond*, 90 S.W.3d at 657 (citing and quoting *Howard*, 30 S.W.3d at 277 n. 6).

4.01(a) – Criminal Attempt: First Degree Murder Where The Victim Suffers Serious Bodily Injury

- a. On the last line of Comment 1, delete 40-35-501(k) and substitute 40-35-501(k)(5).
- b. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- c. Delete the text of footnote 7 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

6.01 – Assault

- a. Immediately after the last element in Part C on p. 65, insert the following:

or

[Part D: **Only for offenses committed on or after 4/28/14 but prior to 7/1/16:**(INSERT FN 2 – see text below)]

- (1) that the defendant unlawfully used a narcotic drug while pregnant;
and
- (2) that the defendant caused bodily injury to her child, in that the child was born *[addicted to]* *[harmed by]* the narcotic drug;
and
- (3) that the *[addiction]* *[harm]* was a result of her unlawful use of the narcotic drug taken while pregnant;
and
- (4) that the defendant acted either intentionally, knowingly or recklessly.]

[**As to Part D only:** It is a defense to prosecution for this offense(INSERT FN 3 – see text below) that the defendant was actively enrolled in an addiction recovery program before the child was born, remained in the program after delivery, and successfully completed the program, regardless of whether the child was born *[addicted to]* *[harmed by]* the narcotic drug. The burden of proof on this issue is upon the defendant to prove the defense by a preponderance(INSERT FN 4 – see text below) of the evidence.(INSERT FN 5 – see text below). If you find that the defendant has proven the defense by a preponderance of the evidence, then you must find the defendant not guilty.]

- b. Text of new footnote 2: T.C.A. §§ 39-13-101 and 39-13-107(c)(2).
- c. Text of new footnote 3: T.C.A. § 39-13-107(c)(3).
- d. Text of new footnote 4: The trial judge should instruct the jury concerning “Preponderance of the evidence.” T.P.I. – Crim. 42.01, Preponderance of evidence.
- e. Text of new footnote 5: T.C.A. § 39-11-204.
- f. Insert the following definitions IN BRACKETS after the definition of “law enforcement officer” and prior to the definition of “recklessly”:

[[“Narcotic drug” means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- (A) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;
- (B) Any salt, compound, isomer, derivative, or preparation thereof that is chemically equivalent or identical with any of the substances listed in (A), but not including the isoquinoline alkaloids of opium;
- (C) Opium poppy and poppy straw; and
- (D) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof that is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine.](INSERT FOOTNOTE WITH THE FOLLOWING TEXT: T.C.A. § 39-17-402.)

[“Opiate” means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. “Opiate” does not include, unless specifically designated as controlled under § 39-17-403, the dextrorotatory isomer of 3-methoxy-methyl-morphinan and its salts (dextromethorphan). “Opiate” does not include its racemic and levorotatory forms.](INSERT FOOTNOTE WITH THE FOLLOWING TEXT: T.C.A. § 39-17-402.) [“Opium poppy” means the plant of the species *papaver somniferum* L, except its seeds.](INSERT FOOTNOTE WITH THE FOLLOWING TEXT: T.C.A. § 39-17-402.) [“Poppy straw” means all parts, except the seeds, of the opium poppy after mowing.](INSERT FOOTNOTE WITH THE FOLLOWING TEXT: T.C.A. § 39-17-402.)]

- g. Add the following to the end of Comment 3: Effective from 4/28/14 to 7/1/16, the legislature amended 39-13-107(c) to allow for prosecution for assault if the defendant lawfully used a narcotic drug while pregnant and the child was born addicted to or harmed by the narcotic drug as a result of the unlawful use.
- h. Renumber existing footnotes as necessary.

6.02(a) – Aggravated Assault (on or after 7/1/13)

- a. On the seventh line of Comment 1 on p. 90, delete 40-35-501(k) and substitute 40-35-501(k)(7).
- b. In BOTH definitions of serious bodily injury on p. 88, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- c. Delete the text of footnote 14 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.
- d. Delete the text of footnote 16 and substitute the following: T.C.A. §§ 39-15-402(d) and 39-11-106.

6.03 – Reckless Endangerment

- a. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**

- b. Delete the text of footnote 7 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

6.04 – Vehicular Assault

- a. On p. 96, move the second paragraph of the definition section so it appears at the end of the first paragraph. This will now be one long paragraph instead of two separate paragraphs.
- b. On p. 97, move the second full paragraph of the definition section so it appears at the end of the first paragraph. This will now be one long paragraph instead of two separate paragraphs.
- c. For both of the requests above, you are combining the paragraph that defines “intoxication” with the paragraph that defines “under the influence of [an intoxicant] [a controlled substance], etc.”
- d. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- e. Delete the text of footnote 4 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

6.08(a) – Domestic Assault (on or after 4/10/08)

- a. Add the following text as a new paragraph at the end of Comment One: For second or subsequent offenses committed on or after 7/1/14, the offender shall be required to serve at least the minimum sentence day for day, and must be required to serve the difference between the time actually served and the maximum sentence on supervised probation. T.C.A. § 39-13-111(c) and (e).

7.08(a) – Vehicular Homicide (Reckless Conduct)

- a. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- b. Delete the text of footnote 3 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

7.08(b) – Vehicular Homicide (Intoxication)

- a. On pp. 176-77, combine the paragraph that begins with “[Only for offenses committed on or after 1/1/11: “Intoxication is defined, etc.” with the paragraph that appears immediately after it. This will now be one long paragraph instead of two separate paragraphs.
- b. On pp. 177-78, make this same change to the first full paragraph (defining “intoxication”) and the paragraph that appears immediately after it.

8.01 – Kidnapping

- a. In footnote 12, delete the period that appears after “39-13-301(3)”
- b. Insert “former” before “T.C.A.” in footnote 10.

- c. Delete the first paragraph in the definition section following the elements on p. 199 and substitute the following (RETAIN THE FOOTNOTE):

A removal or confinement is "unlawful" if it is accomplished by force, threat or fraud, or, in the case of a person who is *[under the age of thirteen (13)] [incompetent]*, if it is accomplished without the consent of a parent, guardian or other person responsible for the general supervision of the *[minor's] [incompetent's]* welfare.

8.02 – Aggravated Kidnapping

- a. Delete the first paragraph in the definition section following the elements on p. 204 and substitute the following (RETAIN THE FOOTNOTE):

A removal or confinement is "unlawful" if it is accomplished by force, threat or fraud, or, in the case of a person who is *[under the age of thirteen (13)] [incompetent]*, if it is accomplished without the consent of a parent, guardian or other person responsible for the general supervision of the *[minor's] [incompetent's]* welfare.

- b. Insert “former” before “T.C.A.” in footnote 11.
- c. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- d. Delete the text of footnote 12 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

8.03 – Especially Aggravated Kidnapping

- a. Delete the first paragraph in the definition section following the elements on p. 209 and substitute the following (RETAIN THE FOOTNOTE):

A removal or confinement is "unlawful" if it is accomplished by force, threat or fraud, or, in the case of a person who is *[under the age of thirteen (13)] [incompetent]*, if it is accomplished without the consent of a parent, guardian or other person responsible for the general supervision of the *[minor's] [incompetent's]* welfare.

- b. Insert the following definition between the definitions for “fraud” and “serious bodily injury” on p. 210:

["Incompetent" means a person who is in need of partial or full supervision, protection, and assistance by reason of mental illness, physical illness or injury, advanced age, developmental disability, or other mental or physical incapacity.](INSERT A FOOTNOTE HERE WITH THE FOLLOWING TEXT: The term “incompetent” is not defined in Title 39. The Committee derived the definition from former T.C.A. § 34-4-102(2).)

- c. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- d. Delete the text of footnote 10 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

8.06 – Involuntary Labor Servitude

- a. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- b. Delete the text of footnote 8 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

9.01 – Robbery

- a. Delete the definition of “effective consent” as well as the footnote following that definition and substitute the following:

“Effective consent” means assent in fact, whether express or apparent, including assent by one legally authorized to act for another. Consent is not effective when:

[(a) induced by deception or coercion [the trial judge should include in the instruction applicable language from the statutory definitions for deception(INSERT FOOTNOTE HERE) or coercion(INSERT FOOTNOTE HERE) if fairly raised in the proof](INSERT FOOTNOTE HERE);] or

[(b) given by a person the defendant knows is not authorized to act as an agent;] or

[(c) given by a person who, by reason of youth, mental disease or defect, or intoxication, is known by the defendant to be unable to make reasonable decisions regarding the subject matter;] or

[(d) given solely to detect the commission of an offense].(INSERT FOOTNOTE HERE)

- b. The text of the first, second and fourth footnotes above will be as follows: T.C.A. § 39-11-106.
- c. The text of the third footnote will be as follows: State v. Pope, 427 S.W.3d 363 (Tenn. 2013).

9.02 – Aggravated Robbery

- a. Delete the definition of “effective consent” as well as the footnote following that definition and substitute the following:

“Effective consent” means assent in fact, whether express or apparent, including assent by one legally authorized to act for another. Consent is not effective when:

[(a) induced by deception or coercion [the trial judge should include in the instruction applicable language from the statutory definitions for deception(INSERT FOOTNOTE HERE) or coercion(INSERT FOOTNOTE HERE) if fairly raised in the proof](INSERT FOOTNOTE HERE);] or

[(b) given by a person the defendant knows is not authorized to act as an agent;] or

[(c) given by a person who, by reason of youth, mental disease or defect, or intoxication, is known by the defendant to be unable to make reasonable decisions regarding the subject matter;] or

[(d) given solely to detect the commission of an offense].(INSERT FOOTNOTE HERE)

- b. The text of the first, second and fourth footnotes above will be as follows: T.C.A. § 39-11-106.
- c. The text of the third footnote will be as follows: State v. Pope, 427 S.W.3d 363 (Tenn. 2013).
- d. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- e. Delete the text of footnote 15 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

9.03 – Especially Aggravated Robbery

- a. Delete the definition of “effective consent” as well as the footnote following that definition and substitute the following:

“Effective consent” means assent in fact, whether express or apparent, including assent by one legally authorized to act for another. Consent is not effective when:

[(a) induced by deception or coercion *[the trial judge should include in the instruction applicable language from the statutory definitions for deception(INSERT FOOTNOTE HERE) or coercion(INSERT FOOTNOTE HERE) if fairly raised in the proof](INSERT FOOTNOTE HERE);*] or

[(b) given by a person the defendant knows is not authorized to act as an agent;] or

[(c) given by a person who, by reason of youth, mental disease or defect, or intoxication, is known by the defendant to be unable to make reasonable decisions regarding the subject matter;] or

[(d) given solely to detect the commission of an offense].(INSERT FOOTNOTE HERE)

- b. The text of the first, second and fourth footnotes above will be as follows: T.C.A. § 39-11-106.
- c. The text of the third footnote will be as follows: State v. Pope, 427 S.W.3d 363 (Tenn. 2013).
- d. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- e. Delete the text of footnote 14 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

9.04 – Carjacking

- a. Delete the definition of “intimidation” on p. 255 and substitute the following:

[[“Intimidation” means unlawful coercion, duress; putting in fear.](INSERT FN) [“Coercion” means a threat, however communicated, to:

- [(A) commit any offense;]
- [(B) wrongfully accuse any person of any offense;]
- [(C) expose any person to hatred, contempt or ridicule;]
- [(D) harm the credit or business repute of any person;] or
- [(E) take or withhold action as a public servant or cause a public servant to take or withhold action].](INSERT FN)]

- b. The text of the first footnote will be identical to the text of footnote 4 on p. 255.
- c. The text of the second footnote will be T.C.A. § 39-11-106.
- d. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- e. Delete the text of footnote 5 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

10.08 – Promoting Prostitution

- a. Insert the following text to the end of this instruction: [It is not a defense to this offense that *[the subject of the offense was a law enforcement officer] [the victim of the offense was a minor and consented to the offense]*].(INSERT A FOOTNOTE WITH THE FOLLOWING TEXT: T.C.A. § 39-13-515(d).)
- b. Immediately after this new defense language, add definitions IN BRACKETS for “law enforcement officer” and “minor”. The definitions for those terms, including the applicable footnotes, can be found on pages 1126 and 1127 in TPI 34.09.

10.08(a) – Promoting Prostitution of a [Minor] [Person with an Intellectual Disability]

- a. Insert the following text to the end of this instruction: [It is not a defense to this offense that *[the subject of the offense was a law enforcement officer] [the victim of the offense was a minor and consented to the offense]*].(INSERT A FOOTNOTE WITH THE FOLLOWING TEXT: T.C.A. § 39-13-515(d).)
- b. Immediately after this new defense language, add definitions IN BRACKETS for “law enforcement officer” and “minor”. The definitions for those terms, including the applicable footnotes, can be found on pages 1126 and 1127 in TPI 34.09.

10.10 – Patronizing Prostitution

- a. Delete the first paragraph on p. 326 and substitute the following: Any person who commits the offense of patronizing prostitution is guilty of a crime.
- b. Insert the following text to the end of this instruction: [It is not a defense to this offense that *[the subject of the offense was a law enforcement officer] [the victim of the offense was a minor and consented to the offense]*].(INSERT A FOOTNOTE WITH THE FOLLOWING TEXT: T.C.A. § 39-13-514(d).)

- c. Immediately after this new defense, add definitions IN BRACKETS for “law enforcement officer” and “minor”. The definitions for those terms, including the applicable footnotes, can be found on pages 1126 and 1127 in TPI 34.09.
- d. Insert the following text immediately after “Class E felony” and before the period near the end of Comment 1: for offenses committed prior to 7/1/14. For offenses committed on or after that date, it is punishable as trafficking for commercial sex acts under T.C.A. § 39-13-309.
- e. After element (3) of Part A (but prior to the “or” that appears between element (3) and Part B) on p. 326, insert the following:

[Only for offenses committed on or after 7/1/14: and

(4) that the victim of the offense was a child under fifteen (15) years of age;

or

(5) that the offense occurred *[on the [grounds] [facilities]] [within one thousand feet (1,000')] of a [public or private school] [secondary school] [preschool] [child care agency] [public library] [recreational center] [public park].*(HERE INSERT A FOOTNOTE WITH THE FOLLOWING TEXT: T.C.A. §§ 39-13-514(b)(4)(A) and 39-13-309(C).

- f. Insert these same two new elements, including the footnote, into Parts B and C on pages 327 and 328 with the exception that the two new elements will be numbered (5) and (6) (as opposed to being numbered (4) and (5) as they are in Part A).

10.16(a) – Violation of Sex Offender Registration Act (on or after 8/1/05)

- a. Delete Part P of the existing instruction and substitute the following:

[Part P: only for offenses committed on or after 7/1/11:

(1) that the defendant was required to register *[as a sexual offender in any form] [as a juvenile offender] [for any reason]* in another jurisdiction prior to the defendant's presence in Tennessee;

and

(2) that the defendant knowingly failed to register in person with the designated law enforcement agency, completing and signing a TBI registration form, within forty-eight (48) hours of *[establishing or changing a primary or secondary residence] [establishing a physical presence at a particular location] [becoming employed or practicing a vocation] [becoming a student] [being released on probation or any other alternative to incarceration other than parole]* in Tennessee.]

10.17(b) – Violation of Sex Offender Residential or Work Restrictions (on or after 8/17/09)

- a. Delete the period at the end of element (2)(k) on p. 389 and substitute a semi-colon
- b. Insert the following new language after element (2)(k) on p. 389

or

(l) **only for offenses committed on or after 7/1/14:** that the defendant, whose victim was an adult, knowingly *[established a primary or secondary residence or any other living accommodation] [accepted employment]* within one thousand feet (1,000') of the property line on which a *[public school] [private or parochial school] [licensed day care center] [child care facility] [public park, playground, recreation center or public athletic field available for use by the general public]* was located.

10.24 – Continuous Sexual Abuse of a Child

- a. New instruction

11.01 – Theft of Property

- a. Delete the definition of “effective consent” as well as the footnote following that definition and substitute the following:

“Effective consent” means assent in fact, whether express or apparent, including assent by one legally authorized to act for another. Consent is not effective when:

[(a) induced by deception or coercion *[the trial judge should include in the instruction applicable language from the statutory definitions for deception(INCERT FOOTNOTE HERE) or coercion(INCERT FOOTNOTE HERE) if fairly raised in the proof](INCERT FOOTNOTE HERE);]* or

[(b) given by a person the defendant knows is not authorized to act as an agent;] or

[(c) given by a person who, by reason of youth, mental disease or defect, or intoxication, is known by the defendant to be unable to make reasonable decisions regarding the subject matter;] or

[(d) given solely to detect the commission of an offense].(INCERT FOOTNOTE HERE)

- b. The text of the first, second and fourth footnotes above will be as follows: T.C.A. § 39-11-106.
- c. The text of the third footnote will be as follows: State v. Pope, 427 S.W.3d 363 (Tenn. 2013).
- d. Delete the definitions of “deception” and “coercion” as well as the accompanying footnotes. The definition of “deception” includes the language on p. 415 that begins with “Deception” and ends at footnote 11.

11.02 – Theft of Services

- a. Delete the definition of “coercion” as well as footnote 3 and substitute the following:

["Coercion" means a threat, however communicated, to:

- [(A) commit any offense;]
- [(B) wrongfully accuse any person of any offense;]
- [(C) expose any person to hatred, contempt or ridicule;]
- [(D) harm the credit or business repute of any person;] or

- [(E) take or withhold action as a public servant or cause a public servant to take or withhold action].(INSERT FOOTNOTE WITH THE FOLLOWING TEXT: T.C.A. § 39-11-106.)]
- b. Delete the definition of “deception” as well as footnotes 4 and 5 and substitute the language below. Please note that the definition of “deception” begins with “Deception” on p. 419 and ends at footnote 5 on p. 420.

["Deception" occurs when a person knowingly:

- [(A) creates or reinforces a false impression by words or conduct, including false impressions of fact, law, value or intention or other state of mind that the person does not believe to be true;]
- [(B) prevents another from acquiring information which would likely affect the other's judgment in the transaction;]
- [(C) fails to correct a false impression of law or fact the person knows to be false and: (i) the person created; or (ii) knows is likely to influence another;]
- [(D) fails to disclose a lien, security interest, adverse claim or other legal impediment to the enjoyment of the property, whether the impediment is or is not valid, or is or is not a matter of public record;]
- [(E) employs any other scheme to defraud;] or
- [(F)(i) promises performance which at the time the person knew he or she did not have the ability to perform or which the person does not intend to perform or knows will not be performed, except mere failure to perform is insufficient to establish that the person did not intend to perform or knew the promise would not be performed;
- (ii) promising performance includes issuing a check or similar sight order for the payment of money or use of a credit or debit card when the person knows the check, sight order, or credit or debit slip will not be honored for any reason].(INSERT FOOTNOTE WITH THE FOLLOWING TEXT: T.C.A. § 39-11-106.)

["Deception" does not include falsity as to matters having no pecuniary significance or puffing by statements unlikely to deceive ordinary persons in the group addressed.](INSERT FOOTNOTE WITH THE FOLLOWING TEXT: T.C.A. § 39-11-106.)]

11.04 – Extortion

- a. In footnote 5, delete (a)(34) and substitute (a)(35).
- b. Insert the following language after the elements of Part B on p. 427:

or

[Part C (only for offenses committed on or after 7/1/14):

- (1) that the defendant intended to impair any entity from the free exercise or enjoyment of any right or privilege secured by the Constitution of Tennessee, the United States Constitution or the laws of the state in an effort to obtain something of value for any entity;
- and
- (2) that the defendant did so by the use of coercion.]
- c. Insert the following in brackets above the definition of “Intent” on p. 427: [“Something of value” includes, but is not limited to, a neutrality agreement, card check agreement, recognition, or other

objective of a corporate campaign.](INSERT FOOTNOTE HERE WITH THE FOLLOWING TEXT: T.C.A. § 39-14-112(a)(3)(A).)

- d. Insert the following in brackets immediately above the definition of “Something of value” (see above): [“Corporate campaign” means any organized effort to unlawfully bring pressure on an entity, other than through collective bargaining, or any other activity protected by federal law.](INSERT FOOTNOTE HERE WITH THE FOLLOWING TEXT: T.C.A. § 39-14-112(a)(3)(B).)
- e. Delete the definition of “coercion” as well as footnote 7 on p. 428 and substitute the following:

“Coercion” means a threat, however communicated, to:

- [(A) commit any offense;]
- [(B) wrongfully accuse any person of any offense;]
- [(C) expose any person to hatred, contempt or ridicule;]
- [(D) harm the credit or business repute of any person;] or
- [(E) take or withhold action as a public servant or cause a public servant to take or withhold action].(INSERT FOOTNOTE WITH THE FOLLOWING TEXT: T.C.A. § 39-11-106.)

11.06 – Criminal Simulation

- a. Delete the text of footnote 5 and substitute the following: T.C.A. § 39-11-106(a)(35).

11.07 – Hindering Secured Creditors

- a. Add the following definition after the definition of “remove” on p.437:

“Effective consent” means assent in fact, whether express or apparent, including assent by one legally authorized to act for another. Consent is not effective when:

[(a) induced by deception or coercion *[the trial judge should include in the instruction applicable language from the statutory definitions for deception(INSERT FOOTNOTE HERE) or coercion(INSERT FOOTNOTE HERE) if fairly raised in the proof](INSERT FOOTNOTE HERE);]* or

[(b) given by a person the defendant knows is not authorized to act as an agent;] or

[(c) given by a person who, by reason of youth, mental disease or defect, or intoxication, is known by the defendant to be unable to make reasonable decisions regarding the subject matter;] or

[(d) given solely to detect the commission of an offense].(INSERT FOOTNOTE HERE)

- b. The text of the first, second and fourth footnotes above will be as follows: T.C.A. § 39-11-106.
- c. The text of the third footnote will be as follows: State v. Pope, 427 S.W.3d 363 (Tenn. 2013).

11.18 – Illegal Possession of / Fraudulent Use of Credit or Debit card

- a. Delete the definition of “effective consent” as well as the footnote following that definition and substitute the following:

“Effective consent” means assent in fact, whether express or apparent, including assent by one legally authorized to act for another. Consent is not effective when:

[(a) induced by deception or coercion *[the trial judge should include in the instruction applicable language from the statutory definitions for deception(INSERT FOOTNOTE HERE) or coercion(INSERT FOOTNOTE HERE) if fairly raised in the proof](INSERT FOOTNOTE HERE);]* or

[(b) given by a person the defendant knows is not authorized to act as an agent;] or

[(c) given by a person who, by reason of youth, mental disease or defect, or intoxication, is known by the defendant to be unable to make reasonable decisions regarding the subject matter;] or

[(d) given solely to detect the commission of an offense].(INSERT FOOTNOTE HERE)

- b. The text of the first, second and fourth footnotes above will be as follows: T.C.A. § 39-11-106.
- c. The text of the third footnote will be as follows: State v. Pope, 427 S.W.3d 363 (Tenn. 2013).
- d. Delete the text of current footnote 11 on p. 464 and substitute the following: T.C.A. § 39-11-106(a)(35).

11.42 – TennCare Fraud

- a. Delete the text of footnote 1 and substitute the following: T.C.A. § 71-5-2601(a)(1)(A) and (a)(5).
- b. Delete the text of Comment One and substitute the following: TennCare fraud is a Class E felony. T.C.A. § 71-5-2601(a)(1)(B) and (a)(5)(D).
- c. Insert the following after element 3 of Part C:

or

[Part D:

(1) that the defendant knowingly *[sold] [delivered] [aided and abetted any person in the [sale] [delivery] of]* a drug;

and

(2) that the defendant used TennCare to obtain the drug.]

- d. Insert the following between the definitions of “aider and abettor” and “knowingly”:

["Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.]
HERE INSERT A FOOTNOTE WITH THE FOLLOWING TEXT: T.C.A. § 39-17-402(6).

["Drug" means:

- (A) Substances recognized as drugs in the United States Pharmacopoeia, official Homeopaths Pharmacopoeia of the United States, or official National Formulary, or any supplements to any of them;
- (B) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animal;
- (C) Substances, other than food, intended to affect the structure or any function of the body of man or animal; and
- (D) Substances intended for use as a component of any article specified in subdivisions (A), (B) or (C). "Drug" does not include devices or their components, parts, or accessories.]HERE INSERT A FOOTNOTE WITH THE FOLLOWING TEXT: T.C.A. § 39-17-402(11).

e. In the definition of "Deliver or delivery" insert a footnote with the following text immediately after the comma that follows "controlled substance": As TennCare fraud is a title 71 offense, the definition of "controlled substance" contained in T.C.A. § 39-17-402(4) does not strictly apply. T.C.A. § 39-17-402 begins with the language "As used in this part and title 53," and so the definitions contained in that statute only apply to Title 39 and 53 offenses. Upon agreement of the parties, it is recommended that a definition of controlled substance be included in the written charge. The court may desire to refer to Title 39 for the definition.

f. Insert the following new definition after the definition of "Deliver or Delivery":

["Sell" or "sale" means a bargained-for offer and acceptance and an actual or constructive transfer or delivery of the substance.]HERE INSERT A FOOTNOTE WITH THE FOLLOWING TEXT: *State v. Holston*, 94 S.W.3d 507, 510 (Tenn. Crim. App. 2002).

12.02 – Intentional Killing of Animal

a. Delete the definition of "effective consent" as well as the footnote following that definition and substitute the following:

"Effective consent" means assent in fact, whether express or apparent, including assent by one legally authorized to act for another. Consent is not effective when:

[(a) induced by deception or coercion [*the trial judge should include in the instruction applicable language from the statutory definitions for deception*(INSERT FOOTNOTE HERE) or coercion(INSERT FOOTNOTE HERE) if fairly raised in the proof](INSERT FOOTNOTE HERE);] or

[(b) given by a person the defendant knows is not authorized to act as an agent;] or

[(c) given by a person who, by reason of youth, mental disease or defect, or intoxication, is known by the defendant to be unable to make reasonable decisions regarding the subject matter;] or

[(d) given solely to detect the commission of an offense].(INSERT FOOTNOTE HERE)

b. The text of the first, second and fourth footnotes above will be as follows: T.C.A. § 39-11-106.

- c. The text of the third footnote will be as follows: State v. Pope, 427 S.W.3d 363 (Tenn. 2013).
- d. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- e. Delete the text of current footnote 5 on p. 535 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

12.11 – Allowing a Dog to Run at Large

- a. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- b. Delete the text of footnote 4 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

12.12 – Allowing a [Fighting] [Dangerous] Dog to Run at Large

- a. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- b. Delete the text of footnote 4 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

13.02 – Aggravated Arson

- a. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- b. Delete the text of footnote 6 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

14.01 – Burglary

- a. Delete the definition of “effective consent” as well as the footnote following that definition and substitute the following:

“Effective consent” means assent in fact, whether express or apparent, including assent by one legally authorized to act for another. Consent is not effective when:

[(a) induced by deception or coercion [the trial judge should include in the instruction applicable language from the statutory definitions for deception(INSERT FOOTNOTE HERE) or coercion(INSERT FOOTNOTE HERE) if fairly raised in the proof](INSERT FOOTNOTE HERE);] or

[(b) given by a person the defendant knows is not authorized to act as an agent;] or

[(c) given by a person who, by reason of youth, mental disease or defect, or intoxication, is known by the defendant to be unable to make reasonable decisions regarding the subject matter;] or

[(d) given solely to detect the commission of an offense].(INSERT FOOTNOTE HERE)

- b. The text of the first, second and fourth footnotes above will be as follows: T.C.A. § 39-11-106.
- c. The text of the third footnote will be as follows: State v. Pope, 427 S.W.3d 363 (Tenn. 2013).

14.02 – Aggravated Burglary

- a. Delete the definition of “effective consent” as well as the footnote following that definition and substitute the following:

“Effective consent” means assent in fact, whether express or apparent, including assent by one legally authorized to act for another. Consent is not effective when:

[(a) induced by deception or coercion *[the trial judge should include in the instruction applicable language from the statutory definitions for deception(INSERT FOOTNOTE HERE) or coercion(INSERT FOOTNOTE HERE) if fairly raised in the proof](INSERT FOOTNOTE HERE);*] or

[(b) given by a person the defendant knows is not authorized to act as an agent;] or

[(c) given by a person who, by reason of youth, mental disease or defect, or intoxication, is known by the defendant to be unable to make reasonable decisions regarding the subject matter;] or

[(d) given solely to detect the commission of an offense].(INSERT FOOTNOTE HERE)

- b. The text of the first, second and fourth footnotes above will be as follows: T.C.A. § 39-11-106.
- c. The text of the third footnote will be as follows: State v. Pope, 427 S.W.3d 363 (Tenn. 2013).

14.03 – Especially Aggravated Burglary

- a. Delete the definition of “effective consent” as well as the footnote following that definition and substitute the following:

“Effective consent” means assent in fact, whether express or apparent, including assent by one legally authorized to act for another. Consent is not effective when:

[(a) induced by deception or coercion *[the trial judge should include in the instruction applicable language from the statutory definitions for deception(INSERT FOOTNOTE HERE) or coercion(INSERT FOOTNOTE HERE) if fairly raised in the proof](INSERT FOOTNOTE HERE);*] or

[(b) given by a person the defendant knows is not authorized to act as an agent;] or

[(c) given by a person who, by reason of youth, mental disease or defect, or intoxication, is known by the defendant to be unable to make reasonable decisions regarding the subject matter;] or

[(d) given solely to detect the commission of an offense].(INSERT FOOTNOTE HERE)

- b. The text of the first, second and fourth footnotes above will be as follows: T.C.A. § 39-11-106.
- c. The text of the third footnote will be as follows: State v. Pope, 427 S.W.3d 363 (Tenn. 2013).
- d. In the definition of serious bodily injury, insert the following text after “eight (8)”: [**only for offenses committed on or after 7/1/14:** twelve (12)]
- e. Delete the text of footnote 7 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

14.04 – Vandalism

- a. Delete the definition of “effective consent” as well as the footnote following that definition and substitute the following:

“Effective consent” means assent in fact, whether express or apparent, including assent by one legally authorized to act for another. Consent is not effective when:

[(a) induced by deception or coercion *[the trial judge should include in the instruction applicable language from the statutory definitions for deception(INSERT FOOTNOTE HERE) or coercion(INSERT FOOTNOTE HERE) if fairly raised in the proof](INSERT FOOTNOTE HERE);]* or

[(b) given by a person the defendant knows is not authorized to act as an agent;] or

[(c) given by a person who, by reason of youth, mental disease or defect, or intoxication, is known by the defendant to be unable to make reasonable decisions regarding the subject matter;] or

[(d) given solely to detect the commission of an offense].(INSERT FOOTNOTE HERE)

- b. The text of the first, second and fourth footnotes above will be as follows: T.C.A. § 39-11-106.
- c. The text of the third footnote will be as follows: State v. Pope, 427 S.W.3d 363 (Tenn. 2013).
- d. In Comment 2, delete 39-11-106(6) and substitute 39-11-106(a)(6).

14.05 – Criminal Trespass

- a. Delete the definition of “effective consent” as well as the footnote following that definition and substitute the following:

“Effective consent” means assent in fact, whether express or apparent, including assent by one legally authorized to act for another. Consent is not effective when:

[(a) induced by deception or coercion *[the trial judge should include in the instruction applicable language from the statutory definitions for deception(INSERT FOOTNOTE HERE) or coercion(INSERT FOOTNOTE HERE) if fairly raised in the proof](INSERT FOOTNOTE HERE);]* or

[(b) given by a person the defendant knows is not authorized to act as an agent;] or

[(c) given by a person who, by reason of youth, mental disease or defect, or intoxication, is known by the defendant to be unable to make reasonable decisions regarding the subject matter;] or

[(d) given solely to detect the commission of an offense].(INSERT FOOTNOTE HERE)

b. The text of the first, second and fourth footnotes above will be as follows: T.C.A. § 39-11-106.

c. The text of the third footnote will be as follows: State v. Pope, 427 S.W.3d 363 (Tenn. 2013).

14.06 – Aggravated Criminal Trespass

a. Delete the definition of “effective consent” as well as the footnote following that definition and substitute the following:

“Effective consent” means assent in fact, whether express or apparent, including assent by one legally authorized to act for another. Consent is not effective when:

[(a) induced by deception or coercion *[the trial judge should include in the instruction applicable language from the statutory definitions for deception(INSERT FOOTNOTE HERE) or coercion(INSERT FOOTNOTE HERE) if fairly raised in the proof](INSERT FOOTNOTE HERE);]* or

[(b) given by a person the defendant knows is not authorized to act as an agent;] or

[(c) given by a person who, by reason of youth, mental disease or defect, or intoxication, is known by the defendant to be unable to make reasonable decisions regarding the subject matter;] or

[(d) given solely to detect the commission of an offense].(INSERT FOOTNOTE HERE)

b. The text of the first, second and fourth footnotes above will be as follows: T.C.A. § 39-11-106.

c. The text of the third footnote will be as follows: State v. Pope, 427 S.W.3d 363 (Tenn. 2013).

14.07(a) – Aggravated Criminal Trespass of Habitation, Hospital, School Campus

a. Delete the definition of “effective consent” as well as the footnote following that definition and substitute the following:

“Effective consent” means assent in fact, whether express or apparent, including assent by one legally authorized to act for another. Consent is not effective when:

[(a) induced by deception or coercion *[the trial judge should include in the instruction applicable language from the statutory definitions for deception(INSERT FOOTNOTE HERE) or coercion(INSERT FOOTNOTE HERE) if fairly raised in the proof](INSERT FOOTNOTE HERE);]* or

[(b) given by a person the defendant knows is not authorized to act as an agent;] or

[(c) given by a person who, by reason of youth, mental disease or defect, or intoxication, is known by the defendant to be unable to make reasonable decisions regarding the subject matter;] or

[(d) given solely to detect the commission of an offense].(INSERT FOOTNOTE HERE)

- b. The text of the first, second and fourth footnotes above will be as follows: T.C.A. § 39-11-106.
- c. The text of the third footnote will be as follows: State v. Pope, 427 S.W.3d 363 (Tenn. 2013).

14.11 – Destruction or Interference with Property Utilized by Railroads

- a. In the definition of serious bodily injury, insert the following text after “eight (8)”: [**only for offenses committed on or after 7/1/14: twelve (12)**]
- b. Delete the text of footnote 5 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

15.01(c) – Aggravated Criminal Littering (on or after 7/1/07)

- a. In Part A, Part B and Part C, renumber existing element (3)(b) as element (3)(c) and insert the following as the new element (3)(b) (the “or” that appears immediately prior to element (3)(b) in the existing instruction will now appear immediately prior to renumbered element (3)(c)):

[or

(b) **Only for offenses committed on or after 7/1/14:** that the littering was in an amount exceeding *[one hundred pounds (100 lbs.) in weight] [thirty (30) cubic feet in volume];]*

- b. Add the following after the first sentence in Comment One: For offenses committed on or after 7/1/14, the fine is increased to not less than two thousand five hundred dollars (\$2,500), nor more than four thousand dollars (\$4,000), if the amount of litter exceeds one hundred pounds (100 lbs.) in weight or thirty (30) cubic feet in volume.

17.01 – Possession of Burglary Tools

- a. Insert the following definition of “effective consent” above the definition for “intentionally” on p. 667:

“Effective consent” means assent in fact, whether express or apparent, including assent by one legally authorized to act for another. Consent is not effective when:

[(a) induced by deception or coercion *[the trial judge should include in the instruction applicable language from the statutory definitions for deception(INSERT FOOTNOTE*

HERE) or coercion(INSERT FOOTNOTE HERE) if fairly raised in the proof(INSERT FOOTNOTE HERE);] or

[(b) given by a person the defendant knows is not authorized to act as an agent;] or

[(c) given by a person who, by reason of youth, mental disease or defect, or intoxication, is known by the defendant to be unable to make reasonable decisions regarding the subject matter;] or

[(d) given solely to detect the commission of an offense].(INSERT FOOTNOTE HERE)

b. The text of the first, second and fourth footnotes above will be as follows: T.C.A. § 39-11-106.

c. The text of the third footnote will be as follows: State v. Pope, 427 S.W.3d 363 (Tenn. 2013).

21.01(c) – Aggravated Child [Abuse] [Neglect] (on or after 7/1/09)

- a. In the last sentence of Comment One, insert “but prior to 7/1/14” after “on or after 7/1/13” and add the following sentence after that sentence but prior to the cite to 40-35-501(k): “For offenses committed on or after 7/1/14, the defendant must serve 85% of the sentence imposed less sentence credits earned and retained, and no credits can reduce the eligibility below 70%.”
- b. In the first line of the definition of “serious bodily injury” on p. 695, delete “Serious bodily injury” and substitute “Serious bodily injury to the child”
- c. In the definition of serious bodily injury (now called “serious bodily injury to the child”), insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- d. Delete the text of footnote 14 and substitute the following: T.C.A. §§ 39-15-402(d) and 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

21.02(b) – Child [Abuse] [Neglect] (on or after 7/1/05)

- a. In lines two and three of Comment 1, delete the following text: Child abuse involving injury of a child six (6) years of age or less is a Class D felony, and if no injury it is a Class E felony. T.C.A. § 39-15-401(b).
- b. Substitute the following text for the text that was deleted above: For offenses committed on or after 7/1/05 but prior to 8/15/09, child abuse involving injury of a child six (6) years of age or less is a Class D felony, and if no injury it is a Class E felony. T.C.A. § 39-15-401(a) and (b). For offenses committed on or after 8/15/09, child abuse involving injury of a child eight (8) years of age or less is a Class D felony, and if no injury it is a Class E felony. T.C.A. § 39-15-401(a) and (b).

21.03(b) – Aggravated Parental or Custodial Child Endangerment

- a. In the last sentence of Comment One, insert “but prior to 7/1/14” after “on or after 7/1/13” and add the following sentence after that sentence but prior to the cite to 40-35-501(k): “For offenses

committed on or after 7/1/14, the defendant must serve 85% of the sentence imposed less sentence credits earned and retained, and no credits can reduce the eligibility below 70%.”

- b. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- c. Delete the text of footnote 10 and substitute the following: T.C.A. §§ 39-15-402(d) and 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

22.01 – Bribery of Public Servant

- a. Add the following new paragraph prior to the paragraph that begins “[It is an exception to this offense” at the bottom of p. 729:

[Only for offenses committed on or after 7/1/14: It is no defense that the person who sought to influence a public official took action on behalf of a public or private organization or any other entity, for the purpose of organizing a campaign or for any other lawful purpose.]

- b. Immediately after the closing bracket of this new language, insert a footnote with the following text: T.C.A. § 39-16-102(b)(2).
- c. Delete the text of current footnote 9 on p. 729 and substitute the following: T.C.A. § 39-16-102(b)(1).

24.02 – Using False Identification

- a. Delete the text of footnote 4 and substitute the following: T.C.A. § 39-11-106(a)(35).

26.02 – False Report of Bombing, Fire or Emergency

- a. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- b. Delete the text of footnote 4 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

26.03 – Tampering with or Fabricating Evidence

- a. Insert the following two new definitions (including the footnotes) in brackets immediately after the elements and prior to the definition of “official proceeding”:

[“Conceal” means to *[prevent disclosure or recognition of]* *[place out of sight]* a *[record]* *[document]* *[thing]*.](INSERT FOOTNOTE WITH THE FOLLOWING TEXT: State v. Hawkins, 406 S.W.3d 121, 132 (Tenn. 2013).)

[“Destroy” means to ruin the evidentiary value of a *[record]* *[document]* *[thing]*.] (INSERT FOOTNOTE WITH THE FOLLOWING TEXT: State v. Hawkins, 406 S.W.3d 121, 132 (Tenn. 2013).)

26.04 – Coercion of Juror

- a. Delete the definition of “coercion” as well as footnote 2 and substitute the following:

"Coercion" means a threat, however communicated, to:

- [(A) commit any offense;]
- [(B) wrongfully accuse any person of any offense;]
- [(C) expose any person to hatred, contempt or ridicule;]
- [(D) harm the credit or business repute of any person;] or
- [(E) take or withhold action as a public servant or cause a public servant to take or withhold action].(INSERT FOOTNOTE WITH THE FOLLOWING TEXT: T.C.A. § 39-11-106.)

26.05 – Coercion of Juror

- a. Delete the definition of “coercion” as well as footnote 4 and substitute the following:

"Coercion" means a threat, however communicated, to:

- [(A) commit any offense;]
- [(B) wrongfully accuse any person of any offense;]
- [(C) expose any person to hatred, contempt or ridicule;]
- [(D) harm the credit or business repute of any person;] or
- [(E) take or withhold action as a public servant or cause a public servant to take or withhold action].(INSERT FOOTNOTE WITH THE FOLLOWING TEXT: T.C.A. § 39-11-106.)

26.06 – Retaliation for Past Action

- a. Insert the following new paragraph at the end of this instruction:

[It is an exception to this offense that the defendant was an employee of the clerk who *[harmed]* *[threatened to harm]* the clerk. If the defendant proves this exception by a preponderance of the evidence, you should find *[him]* *[her]* not guilty.]

- b. In this new language, insert a footnote immediately after the comma that follows “evidence”. The text of the footnote will be identical to the text of footnote 15 on page 967 of the TPI book.
- c. In elements (2) and (3), insert the following text in italics immediately following “[clerk]” each time “[clerk]” appears: *[Only for offenses committed on or after 7/1/14: employee of the clerk]*

26.12 – Activating and Pointing Laser Device, etc.

- a. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- b. Delete the text of footnote 5 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

27.04 – Resisting Stop, etc.

- a. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- b. Delete the text of footnote 7 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

27.07 – Permitting or Facilitating Escape

- a. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- b. Delete the text of footnote 16 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

29.02 – Adulteration of Food, Liquids or Pharmaceuticals

- a. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- b. Delete the text of footnote 3 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

29.13(b) – [Physical Abuse] [Gross Neglect] of Impaired Adult (on or after 7/1/07)

- a. Add the following text to the end of Comment One:

Following a conviction for this offense, the clerk of the court shall notify the department of health of the conviction by sending it a copy of the judgment, and the department shall place the offender on the registry of persons who have abused, neglected, or misappropriated the property of a vulnerable individual. T.C.A. § 71-6-117(c)

29.14(b) – [Abuse] [Neglect] [Exploitation] of Adult (on or after 6/11/07)

- a. Delete the text of Comment One and substitute the following text:

Abuse, neglect or exploitation of an adult under this section is a Class E felony for offenses committed prior to 7/1/14. For offenses committed on or after 7/1/14, it is a Class D felony. T.C.A. § 71-6-117(b). Following a conviction for this offense, the clerk of the court shall notify the department of health of the conviction by sending it a copy of the judgment, and the department shall place the offender on the registry of persons who have abused, neglected, or misappropriated the property of a vulnerable individual. T.C.A. § 71-6-117(c)

30.01 – Aggravated Riot

- a. In the definition of “riot” on p. 887, insert the following text immediately before “which,” in the third line of the definition: **[only for offenses committed on or after 7/1/14: whether or not participating in any otherwise lawful activity.]**

- b. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- c. Delete the text of footnote 9 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

30.02 – Civil Rights Intimidation

- a. Delete the definition of “coercion” as well as footnote 7. Immediately after footnote 9 in the definition of “intimidate” on p. 893, insert the following:

"Coercion" means a threat, however communicated, to:

- [(A) commit any offense;]
- [(B) wrongfully accuse any person of any offense;]
- [(C) expose any person to hatred, contempt or ridicule;]
- [(D) harm the credit or business repute of any person;] or
- [(E) take or withhold action as a public servant or cause a public servant to take or withhold action].(INSERT FOOTNOTE WITH THE FOLLOWING TEXT: T.C.A. § 39-11-106.)

30.05 – Riot

- a. In the definition of “riot” on p. 898, insert the following text immediately before “which,” in the third line of the definition: **[only for offenses committed on or after 7/1/14: whether or not participating in any otherwise lawful activity,]**
- b. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- c. Delete the text of footnote 7 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

30.06 – Inciting to Riot

- a. In the definition of “riot” on p. 902, insert the following text immediately before “which,” in the third line of the definition: **[only for offenses committed on or after 7/1/14: whether or not participating in any otherwise lawful activity,]**
- b. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- c. Delete the text of footnote 6 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

30.12(b) – Aggravated Stalking (for offenses committed on or after 7/1/05)

- a. In the definition of “deadly weapon” on p. 928, delete the bracket that appears immediately before footnote 12 (but retain footnote 12), and insert the following immediately after footnote 12:

"Serious bodily injury" means bodily injury that involves a substantial risk of death; protracted unconsciousness; extreme physical pain; protracted or obvious disfigurement; or protracted loss or substantial impairment of a function of a bodily member, organ or mental faculty [**only for offenses committed on or after 7/1/09:** or a broken bone of a child who is eight (8) [**only for offenses committed on or after 7/1/14:** twelve (12)] years of age or less].(INSERT FOOTNOTE HERE) "Bodily injury" includes a cut, abrasion, bruise, burn or disfigurement, and physical pain or temporary illness or impairment of the function of a bodily member, organ, or mental faculty.(INSERT FOOTNOTE HERE)]

- b. The text of the first footnote above will be as follows: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.
- c. The text of the second footnote above will be as follows: T.C.A. § 39-11-106.

30.12(c) – Especially Aggravated Stalking (on or after 7/1/05)

- a. In the definition of serious bodily injury, insert the following text after "eight (8)": [**only for offenses committed on or after 7/1/14:** twelve (12)]
- b. Delete the text of footnote 15 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

30.15 – Terrorism

- a. Delete the definition of "coercion" as well as footnote 3 and substitute the following:

["Coercion" means a threat, however communicated, to:

- [(A) commit any offense;]
- [(B) wrongfully accuse any person of any offense;]
- [(C) expose any person to hatred, contempt or ridicule;]
- [(D) harm the credit or business repute of any person;] or
- [(E) take or withhold action as a public servant or cause a public servant to take or withhold action].(INSERT FOOTNOTE WITH THE FOLLOWING TEXT: T.C.A. § 39-11-106.)]

31.01 – Controlled Substances: Manufacture, Delivery or Sale

- a. On pp. 961-62, delete the definitions of "manufacture" and "production" and substitute the following:

["Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. "Manufacture" does not include the preparation or compounding of a controlled substance by an individual for the individual's own use [**Only for methamphetamine offenses committed on or after 3/30/05:** unless the controlled substance is methamphetamine, its salts, isomers, or salts of its isomers].(INSERT FOOTNOTE 8 – same text as current instruction) "Production" includes the

manufacturing, planting, cultivating, growing or harvesting of a controlled substance.(INSERT FOOTNOTE 9 – same text as current instruction)]

- b. Add the following as a new paragraph at the end of Comment One:

For offenses committed on or after 7/1/14, a defendant convicted of the manufacture of any amount of methamphetamine shall be punished by confinement for not less than one hundred eighty (180) days, and the person shall serve at least one hundred percent (100%) of the one hundred eighty (180) day minimum. This mandatory minimum sentence shall not be construed to prohibit the defendant from participating in a drug or recovery court that is certified by the department of mental health and substance abuse services, and any person participating in such a court may receive sentence credit for up to the full one hundred eighty (180) day minimum. T.C.A. §39-17-417(n).

31.02 – Counterfeit Controlled Substances

- a. In the definitions of “deliver” and “distribute” delete “controlled substance” and substitute “counterfeit controlled substance”.
- b. On p. 966, delete the definitions of “manufacture” and “production” and substitute the following:

[“Manufacture” means the production, preparation, propagation, compounding, conversion or processing of a counterfeit controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. “Manufacture” does not include the preparation or compounding of a counterfeit controlled substance by an individual for the individual’s own use.(INSERT FOOTNOTE 7 – same text as current instruction) “Production” includes the manufacturing, planting, cultivating, growing or harvesting of a counterfeit controlled substance.(INSERT FOOTNOTE 8 – same text as current instruction)]

31.04 – Controlled Substances: Possession with Intent to Sell or Deliver

- a. On page 977, delete the paragraph that begins “[There are two types of possession” and substitute the following, in brackets:

[There are two types of possession recognized in the law: actual possession and constructive possession. A person who knowingly has direct physical control over an object at a given time is then in actual possession of it. A person who, although not in actual possession, knowingly has both the power and intention at any given time to exercise dominion and control over an object, either directly or through others, is then in constructive possession of it. However, the mere presence of the defendant in an area where drugs are found is not sufficient, standing alone, to find constructive possession. Neither is the defendant’s mere association with a person in control of the drugs or the property where the drugs are located.]

- b. Delete the text of existing footnote 8 and substitute the following: State v. Robinson, 400 S.W.3d 529, 534 (Tenn. 2013); State v. Williams, 623 S.W.2d 121 (Tenn. Crim. App. 1981).

31.05 – Simple Possession or Casual Exchange

- a. Add the following language to the end of Comment One: For offenses committed on or after 7/1/14, a defendant convicted of the simple possession or casual exchange of any amount of methamphetamine shall be punished by confinement for not less than thirty (30) days, and the person shall serve at least one hundred percent (100%) of the thirty (30) day minimum. This mandatory minimum sentence shall not be construed to prohibit the defendant from participating in a drug or recovery court that is certified by the department of mental health and substance abuse services, and any person participating in such a court may receive sentence credit for up to the full thirty (30) day minimum. T.C.A. §39-17-418(c)(2).

31.11 – Obtaining Controlled Substance by Fraud

- a. Delete the definition of “deception” as well as footnote 5 and substitute the language below.

["Deception" occurs when a person knowingly:

- [(A) creates or reinforces a false impression by words or conduct, including false impressions of fact, law, value or intention or other state of mind that the person does not believe to be true;]
- [(B) prevents another from acquiring information which would likely affect the other's judgment in the transaction;]
- [(C) fails to correct a false impression of law or fact the person knows to be false and: (i) the person created; or (ii) knows is likely to influence another;]
- [(D) fails to disclose a lien, security interest, adverse claim or other legal impediment to the enjoyment of the property, whether the impediment is or is not valid, or is or is not a matter of public record;]
- [(E) employs any other scheme to defraud;] or
- [(F)(i) promises performance which at the time the person knew he or she did not have the ability to perform or which the person does not intend to perform or knows will not be performed, except mere failure to perform is insufficient to establish that the person did not intend to perform or knew the promise would not be performed;
- (ii) promising performance includes issuing a check or similar sight order for the payment of money or use of a credit or debit card when the person knows the check, sight order, or credit or debit slip will not be honored for any reason].(INSERT FOOTNOTE WITH THE FOLLOWING TEXT: T.C.A. § 39-11-106.)

["Deception" does not include falsity as to matters having no pecuniary significance or puffing by statements unlikely to deceive ordinary persons in the group addressed.](INSERT FOOTNOTE WITH THE FOLLOWING TEXT: T.C.A. § 39-11-106.)]

31.11(a) – Prescription Drug Fraud

- a. Delete the definition of “deception” as well as footnote 5 and substitute the language below.

["Deception" occurs when a person knowingly:

- [(A) creates or reinforces a false impression by words or conduct, including false impressions of fact, law, value or intention or other state of mind that the person does not believe to be true;]

- [(B) prevents another from acquiring information which would likely affect the other's judgment in the transaction;]
- [(C) fails to correct a false impression of law or fact the person knows to be false and: (i) the person created; or (ii) knows is likely to influence another;]
- [(D) fails to disclose a lien, security interest, adverse claim or other legal impediment to the enjoyment of the property, whether the impediment is or is not valid, or is or is not a matter of public record;]
- [(E) employs any other scheme to defraud;] or
- [(F)(i) promises performance which at the time the person knew he or she did not have the ability to perform or which the person does not intend to perform or knows will not be performed, except mere failure to perform is insufficient to establish that the person did not intend to perform or knew the promise would not be performed;
- (ii) promising performance includes issuing a check or similar sight order for the payment of money or use of a credit or debit card when the person knows the check, sight order, or credit or debit slip will not be honored for any reason].(INSERT FOOTNOTE WITH THE FOLLOWING TEXT: T.C.A. § 39-11-106.)

["Deception" does not include falsity as to matters having no pecuniary significance or puffing by statements unlikely to deceive ordinary persons in the group addressed.](INSERT FOOTNOTE WITH THE FOLLOWING TEXT: T.C.A. § 39-11-106.)]

31.12 – Unlawful Possession of Anhydrous Ammonia, etc. (prior to 3/30/05)

- a. On p. 1004, delete the definitions of “manufacture” and “production” and substitute the following:

“Manufacture” means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. “Manufacture” does not include the preparation or compounding of a controlled substance by an individual for the individual’s own use. (INSERT FOOTNOTE 6 – same text as current instruction) “Production” includes the manufacturing, planting, cultivating, growing or harvesting of a controlled substance.(INSERT FOOTNOTE 7 – same text as current instruction)

31.22 – Imitation Controlled Substances

- a. New instruction

32.09 – Lottery Fraud

- a. Delete the definition of “coercion” as well as footnote 7 and substitute the following:

["Coercion" means a threat, however communicated, to:

- [(A) commit any offense;]
- [(B) wrongfully accuse any person of any offense;]
- [(C) expose any person to hatred, contempt or ridicule;]
- [(D) harm the credit or business reput of any person;] or

- [(E) take or withhold action as a public servant or cause a public servant to take or withhold action].(INSERT FOOTNOTE WITH THE FOLLOWING TEXT: T.C.A. § 39-11-106.)]
- b. Delete the definition of “deception” as well as footnote 6 and substitute the language below. Please note that the definition of “deception” begins with “Deception” on p. 1056 and ends at footnote 6 on p. 1057.

["Deception" occurs when a person knowingly:

- [(A) creates or reinforces a false impression by words or conduct, including false impressions of fact, law, value or intention or other state of mind that the person does not believe to be true;]
- [(B) prevents another from acquiring information which would likely affect the other's judgment in the transaction;]
- [(C) fails to correct a false impression of law or fact the person knows to be false and: (i) the person created; or (ii) knows is likely to influence another;]
- [(D) fails to disclose a lien, security interest, adverse claim or other legal impediment to the enjoyment of the property, whether the impediment is or is not valid, or is or is not a matter of public record;]
- [(E) employs any other scheme to defraud;] or
- [(F)(i) promises performance which at the time the person knew he or she did not have the ability to perform or which the person does not intend to perform or knows will not be performed, except mere failure to perform is insufficient to establish that the person did not intend to perform or knew the promise would not be performed;
- (ii) promising performance includes issuing a check or similar sight order for the payment of money or use of a credit or debit card when the person knows the check, sight order, or credit or debit slip will not be honored for any reason].(INSERT FOOTNOTE WITH THE FOLLOWING TEXT: T.C.A. § 39-11-106.)

["Deception" does not include falsity as to matters having no pecuniary significance or puffing by statements unlikely to deceive ordinary persons in the group addressed.](INSERT FOOTNOTE WITH THE FOLLOWING TEXT: T.C.A. § 39-11-106.)]

35.01 – Prize Fighting, Sparring and other Brutal Sports

- a. In the definition of serious bodily injury, insert the following text after “eight (8)”: [**only for offenses committed on or after 7/1/14: twelve (12)**]
- b. Delete the text of footnote 7 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

36.01 – Weapons: Possessing, Manufacturing, Transporting, Repairing or Selling Prohibited

- a. In element (1) on p. 1138, delete “[switchblade knife]” and substitute the following in italics: [*Only for offenses committed prior to 7/1/14: switchblade knife*]
- b. Delete the text of footnotes 2, 4, 6, 7, 8, 11, 12, and 13 and substitute the following text: T.C.A. § 39-17-1301.
- c. In the definition of serious bodily injury, insert the following text after “eight (8)”: [**only for offenses committed on or after 7/1/14: twelve (12)**]

- d. Delete the text of footnote 9 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

36.02 – Carrying Weapons During Judicial Proceedings

- a. In element (1) of Part B on p. 1143, delete “[switchblade knife]” and substitute the following in italics: *[Only for offenses committed prior to 7/1/14: switchblade knife]*
- b. Delete the text of footnotes 5, 8, 10, 11, 12, 13, 14, 15, and 16 and substitute the following text: T.C.A. § 39-17-1301.
- c. Delete the exception that appears immediately before footnote 24 on p. 1147, substitute the following text, and move footnote 24 to the end of the new text:

[[Only for offenses committed prior to 4/14/14: It is an exception to this offense that the defendant was in the actual discharge of official duties as a judge, was authorized to carry a handgun pursuant to § 39-17-1351, had successfully completed sixteen (16) hours of POST court security training, had successfully completed eight (8) hours of POST firearm training on an annual basis, and was vested with judicial powers under § 16-1-101.]

or

[Only for offenses committed on or after 4/14/14: It is an exception to this offense that the defendant was in the actual discharge of official duties as a judge, was authorized to carry a handgun pursuant to § 39-17-1351, kept the handgun concealed at all times when in the discharge of such duties, and was vested with judicial powers under § 16-1-101.]](FOOTNOTE 24 WILL BE PLACED HERE)

- d. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- e. Delete the text of footnote 6 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

36.03(a) – Possessing or Carrying Weapons with Intent to Go Armed on School Property

- a. Delete the text of footnotes 5, 8, 9 and 10 and substitute the following text: T.C.A. § 39-17-1301.
- b. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- c. Delete the text of footnote 6 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

36.03(b) – Possessing or Carrying Firearms on School Property.

- a. Insert “39-17-1313,” immediately after “39-17-1309(e),” in the first line of Comment 7.

36.04 – Possessing or Carrying Weapons on Public Parks, Civic Centers, Recreational Buildings and Grounds

- a. In element (1) on p. 1157, delete “[switchblade knife]” and substitute the following in italics: *[Only for offenses committed prior to 7/1/14: switchblade knife]*
- b. Delete the text of footnotes 4, 7, 9, 10, 11, 12, 13, 14, 15, and 19 and substitute the following text: T.C.A. § 39-17-1301.
- c. Delete the text of footnote 16 and substitute the following text: T.C.A. § 39-11-106(a)(18).
- d. Insert following text at the end of Comment One: The trial court should refer to T.C.A. § 39-17-1313 for any defenses (39-11-203) and exceptions (39-11-202) to this offense.
- e. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- f. Delete the text of footnote 5 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

36.06(a) – Unlawful Possession of a Deadly Weapon, etc. (on or after 1/1/08)

- a. Insert the following text after element (3) on p. 1178:

[and

(4) **Only for offenses committed on or after 7/1/14:** that the deadly weapon was a switchblade knife.]
- b. In Comment One, insert the following text immediately before the period at the end of the first sentence: , except that the maximum fine is raised from three thousand dollars (\$3,000) to six thousand dollars (\$6,000) if the deadly weapon is a switchblade knife.
- c. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- d. Delete the text of footnote 8 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

36.06(b) – Unlawful Possession of a Deadly Weapon, etc. (on or after 1/1/08)

- a. Insert the following text after element (3) on p. 1182:

[and

(4) **Only for offenses committed on or after 7/1/14:** that the deadly weapon was a switchblade knife.]
- b. In Comment One, insert the following text immediately before the period at the end of the first sentence: , except that the maximum fine is raised from three thousand dollars (\$3,000) to six thousand dollars (\$6,000) if the deadly weapon is a switchblade knife.

- c. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- d. Delete the text of footnote 7 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

36.07 – Unlawful Sale, Loan or Gift of Firearm

- a. In element (1) of Part A on p. 1192, delete “[switchblade knife]” and substitute the following in italics: *[Only for offenses committed prior to 7/1/14: switchblade knife]*

36.08 – Carrying Weapon w/Intent to go Armed

- a. Delete the text of footnotes 5 and 6 and substitute the following text: T.C.A. § 39-17-1301.
- b. In element (1), delete “[a knife with a blade length exceeding four (4) inches]” and substitute the following text in italics: *[Only for offenses committed prior to 7/1/14: a knife with a blade length exceeding four (4) inches]*
- c. In the definition of “Club” on p. 1197, delete the bracket that appears immediately before footnote 5 (but retain footnote 5), and insert the following immediately after footnote 5:

"Serious bodily injury" means bodily injury that involves a substantial risk of death; protracted unconsciousness; extreme physical pain; protracted or obvious disfigurement; or protracted loss or substantial impairment of a function of a bodily member, organ or mental faculty **[only for offenses committed on or after 7/1/09: or a broken bone of a child who is eight (8) [only for offenses committed on or after 7/1/14: twelve (12)]** years of age or less).(INSERT FOOTNOTE HERE) "Bodily injury" includes a cut, abrasion, bruise, burn or disfigurement, and physical pain or temporary illness or impairment of the function of a bodily member, organ, or mental faculty.(INSERT FOOTNOTE HERE)]

- d. The text of the first footnote above will be as follows: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.
- e. The text of the second footnote above will be as follows: T.C.A. § 39-11-106.

36.10 – Possession or Use of Restricted Firearm Ammunition

- a. Delete the text of footnotes 4 and 5 and substitute the following text: T.C.A. § 39-17-1301.

38.01 – DUI, etc. (on or after 7/1/13)

- a. New instruction

38.01(a) – DUI, etc. (prior to 1/1/11)

- a. In the sixth line of Comment 1, add the following text after “and (s).”: A defendant whose blood or breath alcohol concentration was twenty-hundredths of one percent (0.20%) or more shall

serve a minimum of seven consecutive calendar days rather than 48 hours. T.C.A. § 55-10-403(a)(1)(A)(ii).

- b. Delete the text of element (3)(b) and substitute the following: that the alcohol concentration in the defendant's blood or breath was *[eight-hundredths of one percent (.08%) or more [for offenses occurring prior to 7/1/03, substitute "ten-hundredths of one percent (.10%) or more"]]* **[only for offenses committed on or after 7/1/98: twenty-hundredths of one percent (.20%)]**.
- c. Immediately following element (3)(b), delete "[and **[only for offenses committed on or after July 1, 2005]**]" and substitute the following: "**[only for offenses committed on or after 7/1/05: and**" - You will retain footnote 2, which will now appear immediately after "and"

38.01(b) – DUI, etc. (on or after 1/1/11 but prior to 7/1/13)

- a. Delete footnote 1 and footnote 2.
- b. Delete the text of element (3)(b) and substitute the following:

that the alcohol concentration in the defendant's blood or breath was *[eight-hundredths of one percent (.08%)]* *[twenty-hundredths of one percent (.20%)]* or more.
- c. Immediately above the line that says "[[_____] is a controlled substance analogue.]" on p. 1220, insert a line that says: "[[_____] is a Schedule ____ controlled substance.]"
- d. Immediately after the closing bracket of this new language, insert a footnote with the following text: As DUI is a title 55 offense, the definition of "controlled substance" contained in Tenn. Code Ann. § 39-17-402(4) does not strictly apply. Tenn. Code Ann. § 39-17-402 begins with the language "As used in this part and title 53," and so the definitions contained in that statute only apply to Title 39 and 53 offenses. Upon agreement of the parties, it is recommended that a definition of controlled substance be included in the written charge. The court may desire to refer to Title 39 for the definition.
- e. On p. 1220, delete the text of footnote 5 (which will actually be footnote 4 after footnotes 1 and 2 are deleted and the new footnote is added, as noted above) and substitute the following: As DUI is a title 55 offense, the definition of "controlled substance analogue" contained in Tenn. Code Ann. § 39-17-454 does not strictly apply. Tenn. Code Ann. § 39-17-454 begins with the language "As used in this section," and so the definition contained in that statute applies only to 39-17-454. Upon agreement of the parties, the trial judge should include this bracketed language if a controlled substance analogue is alleged in an element and it is one listed in T.C.A. § 39-17-452 as an analogue. If it is not listed, it will be a jury question, and the trial judge should utilize T.P.I.–Crim. 31.20, Controlled Substance Analogue.
- f. In the seventh line of Comment 1, add the following text after "and (s).": A defendant whose blood or breath alcohol concentration was twenty-hundredths of one percent (.20%) or more shall serve a minimum of seven consecutive calendar days rather than 48 hours. T.C.A. § 55-10-403(a)(1)(A)(ii).

38.08 – DUI: Supplemental Instruction Number One

- a. Insert the following text as a new paragraph between the fourth and fifth paragraphs on p. 1232:

[For offenses committed on or after 7/1/10: A person who is convicted of driving under the influence of an intoxicant shall not be considered a repeat or multiple offender if ten (10) or more years have elapsed between the date of the present violation and the date of any immediately preceding violation of driving under the influence of an intoxicant that resulted in a conviction for such offense. If, however, the date of a person's violation of driving under the influence of an intoxicant is within ten (10) years of the date of the present violation, then the person shall be considered a multiple offender. If a person is considered a multiple offender under this part, then every violation of driving under the influence of an intoxicant that resulted in a conviction for such offense occurring within ten (10) years of the date of the immediately preceding violation shall be considered in determining the number of prior offenses. However, a violation occurring more than twenty (20) years from the date of the instant violation shall never be considered a prior offense for that purpose.](INSERT FOOTNOTE HERE WITH THE FOLLOWING TEXT (and renumber the remaining footnotes): T.C.A. § 55-10-405(a).)

38.22 – Boating Under the Influence

- a. New instruction

39.03 – Unlawful Photographing in Violation of Privacy

- a. Delete the definition of “effective consent” as well as the footnote following that definition and substitute the following:

“Effective consent” means assent in fact, whether express or apparent, including assent by one legally authorized to act for another. Consent is not effective when:

[(a) induced by deception or coercion *[the trial judge should include in the instruction applicable language from the statutory definitions for deception(INSERT FOOTNOTE HERE) or coercion(INSERT FOOTNOTE HERE) if fairly raised in the proof](INSERT FOOTNOTE HERE);*] or

[(b) given by a person the defendant knows is not authorized to act as an agent;] or

[(c) given by a person who, by reason of youth, mental disease or defect, or intoxication, is known by the defendant to be unable to make reasonable decisions regarding the subject matter;] or

[(d) given solely to detect the commission of an offense].(INSERT FOOTNOTE HERE)

- b. The text of the first, second and fourth footnotes above will be as follows: T.C.A. § 39-11-106.
- c. The text of the third footnote will be as follows: State v. Pope, 427 S.W.3d 363 (Tenn. 2013).
- d. Insert the following as a new element after element (7) on p. 1283:

[and]

[(8) Only for offenses committed on or after 7/1/14: that the alleged victim was under the age of thirteen (13) when the photograph was taken.](HERE INSERT FOOTNOTE WITH THE FOLLOWING TEXT: T.C.A. § 39-13-605(d). See Comment 1.)

- e. Delete the text of Comment One and substitute the following:

A violation of this offense is a Class A misdemeanor unless the jury finds the defendant either disseminated or permitted the dissemination of the photograph to another person, or (for offenses committed on or after 7/1/14) the victim was under age 13, in which case it is a Class E felony. If the jury finds both of those elements present, it is a Class D felony. T.C.A. § 39-13-605(d).

39.07 – Observation Without Consent

- a. Insert the following definition of “effective consent” prior to the definition of “knowingly” on p. 1304:

[[“Effective consent” means assent in fact, whether express or apparent, including assent by one legally authorized to act for another. Consent is not effective when:

[(a) induced by deception or coercion *[the trial judge should include in the instruction applicable language from the statutory definitions for deception(INSERT FOOTNOTE HERE) or coercion(INSERT FOOTNOTE HERE) if fairly raised in the proof](INSERT FOOTNOTE HERE);]* or

[(b) given by a person the defendant knows is not authorized to act as an agent;] or

[(c) given by a person who, by reason of youth, mental disease or defect, or intoxication, is known by the defendant to be unable to make reasonable decisions regarding the subject matter;] or

[(d) given solely to detect the commission of an offense].](INSERT FOOTNOTE HERE)

- b. The text of the first, second and fourth footnotes above will be as follows: T.C.A. § 39-11-106.
c. The text of the third footnote will be as follows: State v. Pope, 427 S.W.3d 363 (Tenn. 2013).
d. Insert the following text after element (6) on p. 1303

[and

(7) Only for offenses committed on or after 7/1/14: that the alleged victim was under the age of thirteen (13) at the time.]

- e. Delete the text of Comment One and substitute the following text: Observation without consent is a Class A misdemeanor. If the offense is committed on or after 7/1/14 and the victim was under age 13, it is a Class E felony. T.C.A. § 39-13-607(d).

40.03 – Defense: Duress

- a. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- b. Delete the text of footnote 2 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

40.06(b) – Defense: Self-Defense (enacted 5/22/07)

- a. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- b. Delete the text of footnote 21 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

40.08 – Defense: Protection of Property

- a. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- b. Delete the text of footnote 8 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

40.09 – Defense: Protection of Third Person’s Property

- a. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- b. Delete the text of footnote 5 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

40.13 – Affirmative Defense: Claim of Right, etc.

- a. Delete the definition of “effective consent” as well as the footnote following that definition and substitute the following:

 [“Effective consent” means assent in fact, whether express or apparent, including assent by one legally authorized to act for another. Consent is not effective when:

 [(a) induced by deception or coercion *[the trial judge should include in the instruction applicable language from the statutory definitions for deception(INSERT FOOTNOTE HERE) or coercion(INSERT FOOTNOTE HERE) if fairly raised in the proof](INSERT FOOTNOTE HERE);*] or

 [(b) given by a person the defendant knows is not authorized to act as an agent;] or

 [(c) given by a person who, by reason of youth, mental disease or defect, or intoxication, is known by the defendant to be unable to make reasonable decisions regarding the subject matter;] or

[(d) given solely to detect the commission of an offense].(INSERT FOOTNOTE HERE)

- b. The text of the first, second and fourth footnotes above will be as follows: T.C.A. § 39-11-106.
- c. The text of the third footnote will be as follows: State v. Pope, 427 S.W.3d 363 (Tenn. 2013).
- d. In current footnote 5 on p. 1345, delete 39-11-106(a)(34) and substitute 39-11-106.
- e. Delete the definitions of “deception” and “coercion” as well as the accompanying footnotes. The definition of “deception” includes the language on p. 1346 that begins with “Deception” and ends at footnote 8 on p. 1346.

40.14 – Affirmative Defense: Claim of Restitution, etc.

- a. In footnote 8, delete 39-11-106(a)(34) and substitute 39-11-106(a)(35)

40.17 – Defense: Effective Consent

- a. Delete the definition of “effective consent” as well as the footnote following that definition and substitute the following:

“Effective consent” means assent in fact, whether express or apparent, including assent by one legally authorized to act for another. Consent is not effective when:

[(a) induced by deception or coercion *[the trial judge should include in the instruction applicable language from the statutory definitions for deception(INSERT FOOTNOTE HERE) or coercion(INSERT FOOTNOTE HERE) if fairly raised in the proof](INSERT FOOTNOTE HERE);*] or

[(b) given by a person the defendant knows is not authorized to act as an agent;] or

[(c) given by a person who, by reason of youth, mental disease or defect, or intoxication, is known by the defendant to be unable to make reasonable decisions regarding the subject matter;] or

[(d) given solely to detect the commission of an offense].(INSERT FOOTNOTE HERE)

- b. The text of the first, second and fourth footnotes above will be as follows: T.C.A. § 39-11-106.
- c. The text of the third footnote will be as follows: State v. Pope, 427 S.W.3d 363 (Tenn. 2013).
- d. In the definition of serious bodily injury, insert the following text after “eight (8)”: **[only for offenses committed on or after 7/1/14: twelve (12)]**
- e. Delete the text of current footnote 9 on p.1361 and substitute the following: T.C.A. § 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.
- f. Delete the definitions of “deception” and “coercion” as well as the accompanying footnotes. The definition of “deception” includes the language on p. 1359 that begins with “Deception” and ends at footnote 3 on p. 1360.

42.09 – Accomplice

- a. Following footnote 1 in the first paragraph on p. 1389, insert the following text and footnote:

[Only if an accomplice to a sex offense committed against a minor testifies in addition to the minor victim: The alleged victim is not an accomplice.](INSERT A FOOTNOTE WITH THE FOLLOWING TEXT: *State v. Collier*, 411 S.W.3d 886, 899 (Tenn. 2013).)

- b. Delete Comment 1.

42.09(a) – Alternative Instruction: Accomplice

- a. Following footnote 1 in the first paragraph on p. 1391, insert the following text and footnote:

[Only if an accomplice to a sex offense committed against a minor testifies in addition to the minor victim: The alleged victim is not an accomplice.](INSERT A FOOTNOTE WITH THE FOLLOWING TEXT: *State v. Collier*, 411 S.W.3d 886, 899 (Tenn. 2013).)

- b. Delete Comment 1.

42.16 – Absent Material Witness

- a. Delete the text of Comment 1 and insert the text of Comment 1 from 42.16(b) (as amended below).

42.16(a) – Alternative Instruction: Absent Material Witness

- a. Delete the text of Comment 1 and insert the text of Comment 1 from 42.16(b) (as amended below).

42.16(b) – Alternative Instruction: Absent Material Witness

- a. Insert the following text to line 9 of Comment 1 immediately prior to “For cases holding”:

To support a missing witness instruction, the party requesting it must establish “that ‘the witness had knowledge of material facts, that a relationship exists between the witness and the party that would naturally incline the witness to favor the party and that the missing witness was available to the process of the Court for trial.’” *State v. Bigbee*, 885 S.W.2d 797, 804 (Tenn. 1994) (quoting *State v. Middlebrooks*, 840 S.W.2d 317, 334-35 (1992)) (internal citation and quotation marks omitted). To justify a missing witness instruction, “the witness who was not called must not have been equally available to both parties.” See *State v. Boyd*, 867 S.W.2d 330, 337 (Tenn. Crim. App. 1992); *Bolin v. State*, 472 S.W.2d 232, 235 (Tenn. Crim. App. 1971); *State v. Eldridge*, 749 S.W.2d 756, 758 (Tenn. Crim. App. 1988).

42.22 – Evidence of Mental State

- a. Add the following text to the end of the last paragraph of Comment 1 on p. 1418: To justify an instruction on diminished capacity, the proof must establish that any inability to form the requisite culpable mental state was the product of a mental disease or defect, not just a particular emotional state or mental condition. *State v. Adams*, 405 S.W.3d 641, 661 (Tenn. 2013) (proof that the defendant was on Ambien at the time of the offense is also not the type of mental disease

or defect contemplated by a “diminished capacity” theory of defense.) In such a case, the trial judge may wish to utilize TPI – Crim. 40.02, Defense: Intoxication.

T.P.I. – CRIM. 2.06(b)

BURDEN OF PROOF: VENUE (CONTINUOUS SEXUAL ABUSE OF A CHILD)

The burden is upon the state to prove by a preponderance of the evidence that this offense was committed in [_____] County, Tennessee.¹

Proof by a preponderance of the evidence means that the greater weight of the evidence must be in support of the state's contention.²

Venue of the offense lies in this county if at least one (1) incident of sexual abuse of a child occurred within this county on or after July 1, 2014.

If you find that the state has failed to prove by a preponderance of the evidence that at least one (1) incident of sexual abuse of a child occurred within this county on or after July 1, 2014, then you must return a verdict of not guilty.³

¹ T.C.A. § 39-11-201(e).

² In re Estate of Tittle, 485 S.W.2d 255 (Tenn. App. 1972); Blount County v. Perry, 7 Tenn. App. 340 (1928). The trial judge may wish to charge T.P.I. – Crim. 42.01, Preponderance of evidence.

³ T.C.A. § 39-13-534(a)(1)(A).

T.P.I. – CRIM. 10.24

CONTINUOUS SEXUAL ABUSE OF A CHILD

Any person who commits continuous sexual abuse of a child is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:¹

[PART A:

(1)(a) that the defendant engaged in three (3) or more incidents of sexual abuse of a child involving the same minor child on separate occasions;

or

(b) that the defendant engaged in at least one (1) incident of sexual abuse of a child upon three (3) or more different minor children on separate occasions;

and

(2) that these acts were committed over a period of ninety (90) days or more in duration;

and

(3)(a) that the alleged victim(s) of the incidents of sexual abuse of a child shared distinctive, common characteristics, qualities or circumstances with respect to *[each other]* *[the defendant]*;

or

(b) that there were common methods or characteristics in the commission of the offense, allowing otherwise individual offenses to merge into a single continuing offense involving a pattern of criminal activity against similar victims;

and

(4) that the defendant acted either intentionally, knowingly or recklessly.]²

or

[Part B:

(1) that the defendant engaged in five (5) or more incidents of sexual abuse of a child involving two (2) or more different minor children on separate occasions;

and

(2) that these acts were committed over a period of less than ninety (90) days in duration;

and

(3)(a) that the alleged victims of the incidents of sexual abuse of a child shared distinctive, common characteristics, qualities or circumstances with respect to *[each other] [the defendant]*;

or

(b) that there were common methods or characteristics in the commission of the offense, allowing otherwise individual offenses to merge into a single continuing offense involving a pattern of criminal activity against similar victims;

and

(4) that the defendant acted either intentionally, knowingly or recklessly.]³

["Common characteristics, qualities or circumstances" include, but are not limited to:

- (i) The victim(s) *[was] [were]* related to the defendant by blood or marriage;
- (ii) The victim(s) resided with the defendant; or
- (iii) The defendant was an authority figure to the victims, in that at the time of the offense the defendant *[was in a position of trust] [had supervisory or disciplinary power over the victims by virtue of the defendant's legal, professional or occupational status] [had parental or custodial authority over the victims]* and used the position of *[trust] [power] [authority]* to accomplish the sexual contact, and the victims knew each other.⁴ "Sexual contact" includes the intentional touching of the victim's, the defendant's, or any other person's intimate parts, or the intentional touching of the clothing covering the immediate area of the victim's, the defendant's, or any other person's intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification.⁵ "Intimate parts" includes semen, vaginal fluid, the primary genital area, groin, inner thigh, buttock or breast of a human being.^{6]}

"Minor" means any person under eighteen (18) years of age.⁷

"Sexual abuse of a child" means to commit an act upon a minor child that is a violation of:

[(A) T.C.A. § 39-13-502 [Aggravated Rape], if the child is more than thirteen (13) but less than eighteen (18) years of age;]

[(B) T.C.A. § 39-13-503 [Rape], if the child is more than thirteen (13) but less than eighteen (18) years of age;]

[(C) T.C.A. § 39-13-504 [Aggravated Sexual Battery];]

[(D) T.C.A. § 39-13-522 [Rape of a Child];]

[(E) T.C.A. § 39-13-527 [Sexual Battery by an Authority Figure];]

[(F) T.C.A. § 39-13-529(a) [Soliciting Sexual Exploitation of a Minor];]

[(G) T.C.A. § 39-13-531 [Aggravated Rape of a Child];] or

[(H) T.C.A. § 39-13-532 [Statutory Rape by an Authority Figure]].⁸

[If the elements of the offense(s) listed above are not set out elsewhere in the instructions for the jury, the trial judge should set out the elements for those offenses here.]

"Victim" means the person alleged to have been subjected to criminal sexual conduct [and includes the spouse of the defendant].⁹

"Recklessly" means that a person acts recklessly with respect to circumstances surrounding the conduct or the result of the conduct when the person is aware of, but consciously disregards, a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the accused person's standpoint.¹⁰

"Knowingly" means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.¹¹

"Intentionally" means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.¹²

COMMENTS

1. The punishment for continuous sexual abuse of a child can be a Class A, B or C felony, depending on the type and number of sexual offenses committed during the offense. See T.C.A. § 39-13-534(c) for a description of the various punishments. If separate sexual abuse offenses are tried at the same time in separate counts, see T.C.A. § 39-13-534(f) for a description of whether they merge with this offense or may be sentenced separately, and whether or not the state must elect which offenses to submit to the jury. Continuous sexual abuse of a child is a 100% crime, and there shall be no release eligibility until the defendant has served the entire sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn. Such person shall be permitted to earn any credits for which the person is eligible and the credits may be used for the purpose of increased privileges, reduced security classification, or for any purpose other than the reduction of the sentence imposed by the court. T.C.A. § 40-35-501(l).

¹ T.C.A. § 39-13-534.

² T.C.A. §§ 39-11-301(b) and (c) and accompanying Sentencing Commission Comment.

³ T.C.A. §§ 39-11-301(b) and (c) and accompanying Sentencing Commission Comment.

⁴ T.C.A. §§ 39-13-534(a)(1)(B) and 39-13-527(a)(3).

⁵ T.C.A. § 39-13-501.

⁶ T.C.A. § 39-13-501.

⁷ T.C.A. § 39-11-106.

⁸ T.C.A. § 39-13-534(a)(2).

⁹ T.C.A. § 39-13-501.

¹⁰ T.C.A. § 39-11-106.

¹¹ T.C.A. § 39-11-106.

¹² T.C.A. § 39-11-106.

T.P.I. – CRIM. 31.22

IMITATION CONTROLLED SUBSTANCES

Any person who commits the offense of imitation controlled substances is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:¹

[Part A:

(1) that the defendant knowingly *[sold]* *[delivered]* *[manufactured]* a substance;

and

(2) that the defendant knew the substance was an imitation controlled substance.]

or

[Part B:

(1) that the defendant knowingly possessed an imitation controlled substance;

and

(2) that the defendant intended to *[sell]* *[deliver]* *[manufacture]* the substance.]

or

[Part C:

(1) that the defendant intentionally *[smelled]* *[inhaled]* *[injected]* *[ingested]*
[consumed in any manner whatsoever] *[[possessed]* *[used]* for the

purpose of [smelling] [inhaling] [injecting] [ingesting] [consuming in any manner whatsoever]] an imitation controlled substance;

and

(2) that the act was for the purpose of causing *[a condition of intoxication, inebriation, elation, dizziness, excitement, stupefaction or paralysis] [the dulling of the brain or nervous system] [the disturbing or distorting of the audio or visual processes].]*

[Only for offenses committed on or after 7/1/13: “Imitation controlled substance” means a pill, capsule, tablet, or substance in any form whatsoever if it is not a controlled substance listed in Title 39, Chapter 17, Part 4; is subject to abuse; purports, by express or implied representations, to act like a controlled substance that is a stimulant or depressant of the central nervous system; and is not commonly used or recognized for use in that particular formulation for any purpose other than as a stimulant or depressant of the central nervous system; or the chemical structure of the substance is a derivative or analogue of the chemical structure of a controlled substance; and the substance is not commonly used or recognized for use in that particular formulation for any purpose other than as a stimulant or depressant of the central nervous system. “Imitation controlled substance” does not include a pill, capsule, tablet, or substance in any form whatsoever if it is marketed or promoted, or sold as permitted by the United States food and drug administration.]²

[Only for offenses committed prior to 7/1/13: “Imitation controlled substance” means a pill, capsule, tablet, or substance in any form whatsoever which is not a controlled substance listed in Title 39, Chapter 17, Part 4, which is subject to abuse, and which by express or implied representations, purports to act like a controlled substance as a stimulant or depressant of the central nervous system and which is not commonly used or recognized for use in that particular formulation for any purpose other than for such stimulant or depressant effect, unless marketed, promoted, or sold as permitted by the United States food and drug administration; and the chemical structure of which is a derivative of, or substantially similar to, the chemical structure of a controlled substance.]

In determining whether a pill, capsule, tablet, or substance in any other form whatsoever is an imitation controlled substance, there shall be considered, in addition to all other relevant factors, comparisons with accepted methods of marketing for legitimate nonprescription drugs for medicinal purposes rather than for drug abuse or any similar nonmedicinal use, including consideration of the packaging of the drug and its appearance in overall finished dosage form, promotional materials or representations, oral or written, concerning the drug, and the methods of distribution of the drug and where and how it is sold to the public.³

[In determining whether any person intends to manufacture, sell, give or distribute an imitation controlled substance, it may be inferred⁴ from, in addition to all other relevant evidence, whether any distribution or attempted

distribution of such pill, capsule, tablet or substance in any other form whatsoever included an exchange of or a demand for money or other property as consideration, and, if so, whether the amount of such consideration was substantially greater than the reasonable value of such pill, capsule, tablet or substance in any other form whatsoever, considering the actual chemical composition of such pill, capsule, tablet or substance in any other form whatsoever and, where applicable, the price at which over-the-counter substances of like chemical composition sell.]⁵

["Sell" or "sale" means a bargained-for offer and acceptance and an actual or constructive transfer or delivery of the substance.]⁶

["Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of an imitation controlled substance, whether or not there is an agency relationship.]⁷

["Distribute" means to deliver other than by administering or dispensing an imitation controlled substance.]⁸

["Manufacture" means the production, preparation, propagation, compounding, conversion or processing⁹ of an imitation controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container.

"Manufacture" does not include the preparation or compounding of an imitation controlled substance by an individual for the individual's own use.⁹

“Production” includes the manufacturing, planting, cultivating, growing or harvesting of an imitation controlled substance.^{10]}

[“Knowingly” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.]^{11]}

[The requirement of “knowingly” is also established if it is shown that the defendant acted intentionally.]^{12]}

“Intentionally” means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.^{13]}

COMMENTS

1. A violation of Part A or Part B is punishable as a Class E felony, with a fine of not less than two thousand dollars (\$2,000) and not more than five thousand dollars (\$5,000). T.C.A. § 39-17-453(f)(1). Violation of Part C is a Class A misdemeanor, with a fine of not less than two hundred fifty dollars (\$250) and not more than two thousand five hundred dollars (\$2,500). T.C.A. § 39-17-453(f)(2).

¹ T.C.A. § 39-17-453(a)-(c).

² T.C.A. § 39-17-453(d).

³ T.C.A. § 39-17-453(e)(1).

⁴ If the defendant is charged with possessing with intent to manufacture, sell, give or distribute, this inference “shall be transmitted to the jury by the trial judge’s charge.” T.C.A. § 39-17-453(e)(2). The trial judge may also wish to utilize T.P.I. – Crim. 42.19, Inferences.

⁵ T.C.A. § 39-17-453(e)(2).

⁶ State v. Holston, 94 S.W.3d 507, 510 (Tenn. Crim. App. 2002).

⁷ T.C.A. § 39-17-402(6).

⁸ T.C.A. § 39-17-402(9).

⁹ T.C.A. § 39-17-402(15).

¹⁰ T.C.A. § 39-17-402(24).

¹¹ T.C.A. § 39-11-106(a)(20).

¹² T.C.A. § 39-11-301(a)(2).

¹³ T.C.A. § 39-11-106(a)(18).

T.P.I. -- CRIM. 38.01

**DRIVING UNDER THE INFLUENCE [ACCOMPANIED BY A CHILD]
[RESULTING IN SERIOUS BODILY INJURY TO A CHILD] [RESULTING IN
THE KILLING OF A CHILD]
(for offenses committed on or after 7/1/13)**

Any person who commits the offense of driving under the influence of *[an intoxicant] [marijuana] [a controlled substance] [a controlled substance analogue] [a drug] [a substance affecting the central nervous system] [or any combination thereof] [accompanied by a child] [resulting in serious bodily injury to a child] [resulting in the killing of a child]* is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:¹

- (1) that the defendant was driving or was in physical control of an automobile or motor driven vehicle;

and

- (2) that this act occurred on a *[public road or highway] [shopping center] [trailer park] [apartment house complex] [location which is generally frequented by the public at large]*;

and

- (3)(a) that the defendant was under the influence of *[an intoxicant] [marijuana] [a controlled substance] [a controlled substance analogue] [a drug] [a substance affecting the central nervous system] [or any combination thereof]*;

or

- (b) that the alcohol concentration in the defendant's *[blood or breath]*

was eight-hundredths of one percent (.08%)] [blood was twenty-hundredths of one percent (.20%)] [or more]²].

or

- (c) that the defendant's blood alcohol concentration was four-hundredths of one percent (.04%) [or more]³ and the vehicle was a commercial motor vehicle.

[and

- (4)(a) that the defendant was accompanied by a child under eighteen (18) years of age;

or

- (b) that the defendant was accompanied by a child under eighteen (18) years of age, and such child suffered serious bodily injury⁴ as the proximate result of the defendant's driving under the influence;

or

- (c) that the defendant was accompanied by a child under eighteen (18) years of age, and such child was killed as the proximate result of the defendant's driving under the influence.]

[[_____] is a Schedule ____ controlled substance.]⁵

[[_____] is a controlled substance analogue.]⁶

["Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

- (A) Has a gross vehicle weight rating or gross combination weight rating

of twenty-six thousand one (26,001) or more pounds;

(B) Is designed to transport more than fifteen (15) passengers, including the driver; or

(C) Is of any size and is used in the transportation of hazardous materials, as defined in this section;

[The following vehicles are not commercial motor vehicles:

(i) Vehicles that are controlled and operated by a farmer or nursery worker that are used to transport either agricultural products, farm machinery, or farm supplies to or from a farm or nursery, and are not used in the operations of a common or contract motor carrier and are used within one hundred fifty (150) miles of the person's farm or nursery;

(ii) Vehicles designed and used solely as emergency vehicles that are necessary for the preservation of life or property or the execution of emergency governmental functions performed under emergency conditions and not subject to normal traffic regulation, operated by paid or non-paid personnel;

(iii) Vehicles operated for military purposes by active duty military personnel; members of the military reserves; members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training, and national guard military technicians (civilians who are required to wear military uniforms); and active duty United States coast guard personnel. This exception is not applicable to United States reserve technicians;

(iv) Vehicles designed and used primarily as recreational vehicles; and

(v) Vehicles leased strictly and exclusively to transport personal possessions or family members for nonbusiness purposes.]]⁷ ["Recreational vehicle" means a motor vehicle primarily designed as temporary living quarters for recreational camping or travel, as defined in ANSI Standards A119.2 and A119.5. The basic entities are: travel trailer, camping trailer, truck camper, motor home and park trailer.]]⁸

"Intoxication" is defined as acting under the influence of *[an intoxicant] [marijuana] [a controlled substance] [a controlled substance analogue] [a drug] [a substance affecting the central nervous system] [or any combination thereof]*.

The expression "under the influence of *[an intoxicant] [marijuana] [a controlled substance] [a controlled substance analogue] [a drug] [a substance affecting the central nervous system] [or any combination thereof]*" covers not only all the well known and easily recognized conditions and degrees of intoxication, but also any mental or physical condition which is the result of taking *[an intoxicant] [marijuana] [a controlled substance] [a controlled substance analogue] [a drug] [a substance affecting the central nervous system] [or any combination thereof]* in any form and which deprives one of that clearness of mind and control of oneself which one would otherwise possess. In this situation, it would not be necessary that the person be in such a condition as would make *[him] [her]* guilty of public drunkenness. The law merely requires that the person be under the influence of *[an intoxicant] [marijuana] [a controlled substance] [a controlled substance analogue] [a drug] [a substance affecting the central nervous system] [or any combination thereof]*. The degree of intoxication must

be such that it impairs the driver's ability to safely operate a motor vehicle by depriving the driver of the clearness of mind and control of *[himself]* *[herself]* which *[he]* *[she]* would otherwise possess.⁹

["Proximate result" means a result, which in natural and continuous sequence, is a product of an act occurring or concurring with another, which, had it not happened, the result would not have occurred.]¹⁰

COMMENTS

1. Driving under the influence (first offense) is punishable by a fine of not less than three hundred fifty dollars (\$350) nor more than one thousand five hundred dollars (\$1,500) and confinement in the county jail or workhouse for not less than forty-eight (48) hours nor more than eleven (11) months and twenty-nine (29) days, and the defendant must perform 24 hours of litter pickup. T.C.A. §§ 55-10-402(a)(1)(A) and 55-10-403(a)(1). A defendant whose blood alcohol concentration was twenty-hundredths of one percent (0.20%) shall serve a minimum of seven consecutive days rather than 48 hours. T.C.A. § 55-10-402(a)(1)(B). If the defendant has a prior conviction within the past five (5) years, the court "shall order such person to undergo a drug and alcohol assessment and receive treatment as appropriate." T.C.A. § 55-10-410(a)(4). If the defendant is accompanied by a child, there is a mandatory minimum incarceration of 30 days, and the defendant shall be fined \$1,000 in addition to the fine for the DUI offense. T.C.A. §§ 55-10-402(b)(1) and 55-10-403(a)(5). The incarceration enhancement shall be served in addition to any period of incarceration received for the violation of T.C.A. § 55-10-401. T.C.A. § 55-10-402(b)(1). If the child suffers serious bodily injury as a proximate result, the DUI "shall be punished as provided in § 39-13-106, for vehicular assault." T.C.A. § 55-10-402(b)(2). If the child is killed as a proximate result, the defendant "commits a Class B felony and shall be punished as provided in § 39-13-213(b)(2), for vehicular homicide involving intoxication." T.C.A. § 55-10-402(b)(3). The judge must report any such child endangerment to appropriate authorities for investigation pursuant to T.C.A. § 37-1-403(c)(2).

2. See T.P.I. – Crim. 38.02 (Lawful Use Not a Defense); T.P.I. – Crim. 38.03 (Additional Blood Sample); T.P.I. – Crim. 38.04 (Refusal of Test); T.P.I. – Crim. 38.05 (Blood Alcohol Test); T.P.I. – Crim. 38.06 (Physical Control); T.P.I. – Crim. 38.08 (Supplemental Instruction for Multiple Counts of Prior Convictions); and T.P.I. – Crim. 38.09 (Underage Driving While Impaired).

3. In addition to other punishment, a first offender's driver's license shall be

revoked for 1 year; for a second offense, 2 years; for a third offense, 6 years; for a fourth or subsequent offense, 8 years. T.C.A. § 55-10-404(a)(1).

¹ T.C.A. § 55-10-401 and T.C.A. § 55-10-402(b).

² It is the opinion of the Committee that even though the new DUI statute left out the “or more” language when it was rewritten in 2013, the trial judge, after discussion with the attorneys, may wish to insert that language.

³ It is the opinion of the Committee that even though the new DUI statute left out the “or more” language when it was rewritten in 2013, the trial judge, after discussion with the attorneys, may wish to insert that language.

⁴ As driving under the influence is a Title 55 offense, the definition of “serious bodily injury” contained in T.C.A. § 39-11-106(a)(34) does not strictly apply. T.C.A. § 39-11-106(a) begins with the language “As used in this Title,” and so the definitions contained in that statute only apply to Title 39 offenses. Upon agreement of the parties, it is recommended that a definition of serious bodily injury be included in the written charge. The court may desire to refer to Title 39 for the definition.

⁵ As DUI is a Title 55 offense, the definition of “controlled substance” contained in T.C.A. § 39-17-402(4) does not strictly apply. T.C.A. § 39-17-402 begins with the language “As used in this part and title 53,” and so the definitions contained in that statute only apply to Title 39 and 53 offenses. Upon agreement of the parties, it is recommended that a definition of controlled substance be included in the written charge. The court may desire to refer to Title 39 for the definition.

⁶ As DUI is a Title 55 offense, the definition of “controlled substance analogue” contained in T.C.A. § 39-17-454 does not strictly apply. T.C.A. § 39-17-454 begins with the language “As used in this section,” and so the definition contained in that statute applies only to T.C.A. § 39-17-454. Upon agreement of the parties, the trial judge should include this bracketed language if a controlled substance analogue is alleged in an element and it is one listed in T.C.A. § 39-17-452 as an analogue. If it is not listed, it will be a jury question, and the trial judge should utilize T.P.I. – Crim. 31.20, Controlled substance analogue.

⁷ T.C.A. § 55-50-102(12).

⁸ T.C.A. § 55-50-102(46).

⁹ T.C.A. § 55-10-401(1).

¹⁰ The definition of “proximate result” is based on the definition of “proximate cause,” as set forth in T.P.I. – Crim. 7.05(b), Second degree murder (drugs as proximate cause).

T.P.I. -- CRIM. 38.22

BOATING UNDER THE INFLUENCE

Any person who commits the offense of boating under the influence of *[an intoxicant] [marijuana] [a narcotic drug] [a drug producing stimulating effects on the central nervous system]* is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:¹

- (1) that the defendant was operating a *[vessel subject to registration] [commercial vessel]* on the public waters of Tennessee;

and

- (2)(a) that the defendant was under the influence of *[an intoxicant] [marijuana] [a narcotic drug] [a drug producing stimulating effects on the central nervous system]*;

or

- (b) that the alcohol concentration in the defendant's blood or breath was eight-hundredths of one percent (.08%) or more.

[Evidence that there was, at the time alleged, five-hundredths of one percent (.05%), or less, by weight of alcohol in the blood of the defendant, shall create no inference of intoxication.]²

["Commercial vessel" means any vessel used or whose principal use is to carry passengers for hire for monetary or other consideration or any vessel used or whose principal use is to transport or to assist in the transportation of goods or services.]³

["Drugs producing stimulating effects on the central nervous system" includes the

salts of barbituric acid, also known as malonyl urea, or any compound, derivatives, or mixtures thereof that may be used for producing hypnotic or somnifacient effects, and includes amphetamine, desoxyephedrine or compounds or mixtures thereof, including all derivatives of phenoethylamine or any of the salts thereof, except preparations intended for use in the nose and unfit for internal use.]⁴

["Intoxication" is defined as acting under the influence of *[an intoxicant]* *[marijuana]* *[a controlled substance]* *[a controlled substance analogue]* *[a drug]* *[a substance affecting the central nervous system]* *[or any combination thereof]*.

The expression "under the influence of *[an intoxicant]* *[marijuana]* *[a controlled substance]* *[a controlled substance analogue]* *[a drug]* *[a substance affecting the central nervous system]* *[or any combination thereof]*" covers not only all the well known and easily recognized conditions and degrees of intoxication, but also any mental or physical condition which is the result of taking *[an intoxicant]* *[marijuana]* *[a controlled substance]* *[a controlled substance analogue]* *[a drug]* *[a substance affecting the central nervous system]* *[or any combination thereof]* in any form and which deprives one of that clearness of mind and control of oneself which one would otherwise possess. In this situation, it would not be necessary that the person be in such a condition as would make *[him]* *[her]* guilty of public drunkenness. The law merely requires that the person be under the influence of *[an intoxicant]* *[marijuana]* *[a controlled substance]* *[a controlled substance analogue]* *[a drug]* *[a substance affecting the central nervous system]* *[or any combination thereof]*. The degree of intoxication must be such that it impairs the operator's ability to safely operate a *[vessel subject to registration]* *[commercial vessel]* by depriving the operator of the clearness of mind and control of

[himself] [herself] which [he] [she] would otherwise possess.^{5]}

[It is not a defense that the defendant, while under the influence of narcotic or barbitol drugs, was or had been entitled to use such drugs under the laws of this state.]^{6]}

[It is an exception to this offense that at the time of the alleged intoxication the vessel was moored or anchored.]^{7]}

COMMENTS

1. Boating under the influence is a Class A misdemeanor. A first offense is punishable by a fine of not less than two hundred fifty dollars (\$250) nor more than two thousand five hundred dollars (\$2,500), and confinement for up to eleven (11) months and twenty-nine (29) days. In the discretion of the court, the person's privilege to operate any vessel subject to registration on the public waters of the state shall be suspended for a period not to exceed one (1) year. A second offense carries a fine of not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500), and confinement for a period not to exceed eleven (11) months and twenty-nine (29) days, and the court shall prohibit such convicted person from operating any vessel subject to registration on the public waters of the state for a period of two (2) years. A third or subsequent conviction is punishable by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) and confinement for not less than thirty (30) days nor more than eleven (11) months and twenty-nine (29) days, and the court shall prohibit such person from operating any vessel subject to registration on the public waters of the state for a period of not less than three (3) years nor more than ten (10) years. T.C.A. § 69-9-219(c)(1). In addition, the court, in its discretion, may require any defendant to remove litter from public areas, playgrounds, picnic ramps and areas giving the public access to the public waters of the state or to work in a recycling center or other appropriate location for any prescribed period of time in addition to any of the penalties otherwise provided in this section. T.C.A. § 69-9-219(c)(2).

¹ T.C.A. § 69-9-217(a) and (j)(2).

² T.C.A. § 69-9-217(j)(1).

³ T.C.A. § 69-9-217(b)(1).

⁴ T.C.A. § 69-9-217(b)(2).

⁵ This definition was taken from T.C.A. § 55-10-401(1), the DUI statute.

⁶ T.C.A. § 69-9-217(c).

⁷ T.C.A. § 69-9-217(n).